

MONTANA LEGISLATIVE HISTORY

Chapter 393 19 71

Bill H 265 S _____ Original bill & history ____C

H. Committee on Enviro. & Resources

S. Committee on Irrigation & Water

Hearing Date(s) 1/30/71 ☒ C

Hearing Date(s) 2/23/71 ☒ C

2/8/71 ☒ C

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Date Out _____ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

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House BILL NO. *265*
INTRODUCED BY *Darrow*

Jackson
Wheeler
Baden
Campbell
Cox
Robbins
Kelly
Anderson
Wright
Alford

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO
MANAGEMENT AND REGULATION OF THE FLOODWAYS OF
WATERCOURSES AS PRESCRIBED; TO DEFINE TERMS; TO PROVIDE
FOR CERTAIN DUTIES AND POWERS OF THE MONTANA WATER
RESOURCES BOARD AS PRESCRIBED; TO PROVIDE FOR A FLOODWAY
OBSTRUCTION REMOVAL FUND; TO DECLARE CERTAIN ACTS
UNLAWFUL; AND TO PROVIDE FOR PENALTIES."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE
OF MONTANA:

Section 1. The people of the state of Montana find
that recurrent flooding of a portion of the state's land
resources causes loss of life, damage to property,
disruption of commerce and governmental services, and
unsanitary conditions; all of which are detrimental to
the health, safety, welfare and property of the occupants
of flooded lands and the people of this state, and that
the public interest necessitates management and
regulation of flood-prone lands and waters in a manner
consistent with sound land and water use management
practices which will prevent and alleviate flooding
threats to life and health and reduce private and public
economic losses.

Section 2. The policy and purposes of this act are
to guide development of the floodway areas of this state
consistent with the enumerated findings; to recognize
the right and need of watercourses to periodically carry

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1 more than the normal flow of water; to provide state
2 coordination and technical assistance to local units in
3 management of floodway areas; to coordinate Federal,
4 state and local management activities for floodway areas;
5 to encourage local governmental units to manage flood-
6 prone lands including the adoption, enforcement and
7 administration of land use regulations and to provide the
8 Montana water resources board with authority necessary to
9 carry out a comprehensive floodway management program
10 for the state.

11 Specifically, it is the purpose of this act to:

12 (1) restrict or prohibit uses which are dangerous
13 to health, safety of property in times of flood or cause
14 increased flood heights or velocities

15 (2) require that uses vulnerable to floods,
16 including public facilities which serve such uses, be
17 provided with flood protection at the time of initial
18 construction

19 (3) develop and provide information to identify
20 lands which are unsuited for certain development purposes
21 because of flood hazard.

22 Section 3. As used in this act, unless the context
23 otherwise requires:

24 (1) A flood of fifty year frequency shall mean a
25 flood magnitude expected to recur on the average of once
26 every fifty years, or a flood magnitude which has a two
27 per cent chance of occurring in any given year;

28 (2) Artificial obstruction shall mean any
29 obstruction which is not a natural obstruction;

30 (3) Channel shall mean the geographical area

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1 within either the natural or artificial banks of a
2 watercourse or drainway;

3 (4) Board shall mean the Montana water resources
4 board;

5 (5) Designated floodway shall mean a floodway
6 whose limits have been designated and established by
7 order of the board.

8 (6) Drainway shall mean any depression two feet or
9 more below the surrounding land serving to give direction
10 to a current of water less than nine months of the year,
11 having a bed and well-defined banks; provided, that
12 in the event of doubt as to whether a depression is a
13 watercourse or drainway, it shall be presumed to be a
14 watercourse;

15 (7) Flood shall mean the water of any watercourse
16 or drainway which is above the bank or outside the channel
17 and banks of such watercourse or drainway;

18 (8) Floodway shall mean the channel of a watercourse
19 or drainway and those portions of the floodplain
20 adjoining the channel which are reasonably required to
21 carry and discharge the flood water of any watercourse
22 or drainway;

23 (9) Floodway-encroachment lines shall mean the
24 lines limiting a designated floodway;

25 (10) Floodplain shall mean the area adjoining the
26 watercourse or drainway which has been or may hereafter
27 be covered by flood water;

28 (11) Establish shall mean construct, place, insert,
29 or excavate;

30 (12) Natural obstruction shall mean any rock,

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1 tree, gravel, or analogous natural matter that is an
2 obstruction and has been located within the floodway
3 by a nonhuman cause;

4 (13) Obstruction shall mean any dam, wall, riprap,
5 embankment, levee, dike, pile, abutment, projection,
6 revetment, excavation, channel rectification, bridge,
7 conduit, culvert, building, refuse, automobile body, fill,
8 or other analogous structure or matter in, along, across,
9 or projecting into any floodway which may impede, retard
10 or change the direction of the flow of water, either in
11 itself or by catching or collecting debris carried
12 by such water, or that is placed where the natural flow
13 of the water would carry the same downstream to the
14 damage or detriment of either life or property;

15 (14) Owner shall mean any person who has dominion
16 over, control of, or title to an obstruction;

17 (15) Political subdivision shall mean any
18 incorporated city or town or any county organized and having
19 authority to adopt and enforce land-use regulations; and

20 (16) Watercourse shall mean any depression two feet
21 or more below the surrounding land serving to give
22 direction to a current of water at least nine months of
23 the year, having a bed and well-defined banks; provided,
24 that it shall, upon order of the board, also include any
25 particular depression which would not otherwise be
26 within the definition of watercourse.

27 Section 4. (1) The board shall initiate a
28 comprehensive program for the delineation of designated
29 floodways for every water course and drainway in the
30 state. It shall make a study relating to the acquiring

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1 of flood data, and have authority to enter into
2 arrangements with the United States geological survey,
3 the United States army corps of engineers or any other
4 state or federal agency for such acquisition.

5 (2) When sufficient data have been acquired to
6 reasonably locate the floodway of a flood of fifty year
7 frequency, the board shall establish, by order, after a
8 public hearing, floodway-encroachment lines for such a
9 floodway within which a political subdivision may
10 establish land-use regulation. The board shall furnish
11 such data to officials of the political subdivision
12 having jurisdiction over such areas together with a
13 map outlining the areas involved, a copy of this act,
14 adopted rules and regulations of the board, and suggested
15 minimum standards. These standards, rules and regulations
16 shall reflect gradations in flood hazard based on flood
17 frequency and other criteria as outline in subsection (2)
18 of section 7 of this act. The location of the encroach-
19 ment lines shall be the estimated outer boundary of the
20 floodway of fifty year frequency flood, as determined
21 from the available data. The board shall record all
22 floodway-encroachment lines established by it in the
23 office of the county clerk and recorder of each county
24 in which such lines are found. The board shall have the
25 power to alter such lines at any later time, by order,
26 after a public hearing if a reevaluation of the then
27 available flood data warrants it. Notice of any such
28 hearing or order of the board establishing or altering
29 any such line shall be given by publishing such notice
30 once each week for three consecutive weeks in a legal

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1 newspaper published or of general circulation in the
2 area involved, the last publication of which shall be
3 not less than ten days prior to the date set for the
4 hearing or the effective date of such order.

5 (3) If within one year from the date of transmittal
6 of the flood plain information to officials of the
7 political subdivisions, any political subdivision has
8 failed to adopt land-use regulations which meet or exceed
9 the minimum standards of the board, the designated
10 floodway shall be enforced and no artificial obstruction
11 or nonconforming use shall be established by any person
12 within the floodway-encroachment lines for such a fifty
13 year flood as established by the board under subsection
14 (2) of this section, unless specifically authorized by
15 the board.

16 Section 5. Any artificial obstruction or noncon-
17 forming use in any designated floodway enforced under
18 subsection (3) of section 4 of this act and not exempt
19 under section 6 of this act is hereby declared to be a
20 public nuisance unless a permit has been obtained for
21 such artificial obstruction or nonconforming use from
22 the board.

23 Section 6. (1) It shall be unlawful for a person
24 to establish any artificial obstruction or nonconforming
25 use within a designated floodway, or (2) for any owner
26 to permit any artificial obstruction to remain within a
27 designated floodway without a permit from the board.
28 This act shall not affect any existing artificial
29 obstruction or nonconforming use established in the
30 floodway prior to the effective date of this act and

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1 before the board has enforced a designated floodway
2 under subsection (3) of section 4 of this act; provided,
3 that no person shall make nor shall any owner allow
4 alterations of any artificial obstruction within a
5 designated floodway whether the obstruction proposed
6 for alteration was located in the floodway before or
7 after the effective date of this act except upon express
8 written approval of the board. Maintenance of an
9 obstruction shall not be construed to be an alteration.

10 (2) The following open space uses shall be
11 permitted within the designated floodway, to the extent
12 that they are not prohibited by any other ordinance or
13 statute, and provided they do not require structures
14 other than portable structures, fill, or permanent
15 storage of materials or equipment; (a) agricultural uses
16 (b) industrial-commercial uses such as loading areas,
17 parking areas, emergency landing strips (c) private and
18 public recreational uses such as golf courses, tennis
19 courts, driving ranges, archery ranges, picnic grounds,
20 boat launching ramps, swimming areas, parks, wildlife
21 management and natural areas, game farms, fish hatcheries,
22 shooting preserves, target ranges, trap and skeet ranges,
23 hunting and fishing areas, hiking and horseback riding
24 trails (d) forestry, including processing of forest
25 products with portable equipment (e) residential uses
26 such as lawns, gardens, parking areas and play areas
27 (f) excavations subject to the issuance of a permit
28 under section 7.

29 (3) The following nonconforming uses shall be
30 prohibited within the designated floodway: (a) Any

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1 building for living purposes or place of assembly or
2 permanent use by human beings (b) any structure or
3 excavation that will cause water to be diverted from
4 the established floodway, cause erosion, obstruct the
5 natural flow of water, or reduce the carrying capacity
6 of the floodway (c) the construction or permanent storage
7 of any object subject to flotation or movement during
8 flood level periods.

9 Section 7. (1) The board shall have the power
10 to issue permits for the establishment or alteration of
11 obstructions which would otherwise violate section 6
12 of this act. The application for the permit shall
13 contain such information as the board shall require,
14 including complete maps, plans, profiles and specifications
15 of the obstruction and watercourse or drainway.

16 (2) In passing upon such application, the board
17 shall consider (a) the danger to life and property by
18 water which may be backed up or diverted by such
19 obstruction, (b) the danger that the obstruction will
20 be swept downstream to the injury of others, (c) the
21 availability of alternate locations, (d) the construction
22 or alteration of the obstruction in such a manner as to
23 lessen the danger, (e) the permanence of the obstruction,
24 (f) the anticipated development in the foreseeable future
25 of the area which may be affected by the obstruction,
26 and (g) such other factors as are in harmony with the
27 purpose of this act. The board may make a part of such
28 permit any reasonable conditions it may deem advisable.
29 In order for the permit to continue to remain in force,
30 the obstruction must be maintained so as to comply

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1 with the conditions and specifications of the permit.

2 (3) Permits for obstructions to be established
3 in the floodway of watercourses must be specifically
4 approved or denied within a reasonable time by the board;
5 permits for obstructions in the floodways or drainways
6 shall be conclusively deemed to have been granted sixty
7 days after the receipt of such application by the board,
8 or after such time as the board shall by rule specify,
9 unless the board notifies the applicant that the permit
10 is denied.

11 (4) Every application for a permit shall be
12 accompanied by a nonrefundable application fee of ten
13 dollars which the state treasurer shall credit to the
14 Floodway Obstruction Removal Fund.

15 Section 8. The powers and duties of the board
16 relative to obstructions in a board floodway shall
17 include the following:

18 (1) Where an obstruction to a floodway established
19 under subsection (2) of section 4 of this act has been
20 created by fallen trees, silt, debris, wreckage,
21 unanchored automobile bodies, and like matter, the board
22 may, in its discretion, remove the obstruction, in which
23 case the cost of removal shall be borne by the board;
24 and

25 (2) Where, after investigation, notice, and
26 hearing, an order has been issued to the owner of an
27 obstruction not exempt under the provisions of section
28 6 of this act for its removal or repair, and the order
29 is not complied with within such reasonable time as may
30 be prescribed, or if the owner cannot be found or

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1 determined, the board may make or cause such removal
2 or repairs to be made, the cost of which shall be borne
3 by the owner and shall be recoverable in the same
4 manner as debts are now recoverable by law.

5 Section 9. The board, its agents, surveyors, or
6 other employees, may make reasonable entry upon any
7 lands and waters in the state for the purpose of making
8 any investigation, survey, removal, or repair contemplated
9 by this act. An investigation of any natural or
10 artificial obstruction shall be made by the board either
11 on its own initiative, on the written request of any
12 three titleholders of land abutting the watercourse or
13 drainway involved, or on the written request of any
14 political subdivision.

15 Section 10. This act shall not extend to any
16 obstruction in the floodway of a watercourse or drainway
17 where the drainage area above the same, either within
18 or without the state, is less than twenty-five square
19 miles in extent, unless a particular watercourse or
20 drainway is expressly declared to be within the coverage
21 of this act by order of the board.

22 Section 11. The board may issue such orders and
23 rules as are necessary to implement the provisions of
24 this act. If an order is issued to the owner of an
25 artificial obstruction not exempt under the provisions
26 of section 6 of this act for its removal or repair, such
27 order shall not become effective less than ten days
28 after a hearing is held relating to such order. In
29 addition to any requirement imposed by subsection (2)
30 of section 4 of this act, where any order is issued which

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1 affects with particularity the land adjacent to any
2 watercourse or drainway, notice of the contents of such
3 order and of any required hearing shall be mailed by the
4 board to the titleholder of such land not less than ten
5 days before the effective date of such order, or, if
6 there is a required hearing, to the titleholder of such
7 land and to the owner of the obstruction not less than
8 ten days before the date of such hearing; provided, that
9 such notice need not be given to the owner of the
10 obstruction for an order issued pursuant to subsection
11 (2) of section 8 of this act if the owner cannot be found
12 or determined. All orders and rules issued by the board
13 shall be on file at the offices of the board and in the
14 office of the county clerk of each county affected by
15 such order or rule. Any person aggrieved by any order
16 of the board issued under this act may appeal from such
17 order to a court of competent jurisdiction within
18 thirty days after its effective date. In the event such
19 an appeal is taken, enforcement of such order shall be
20 stayed pending the outcome of such appeal. Service of
21 notice of the appeal shall be made upon the director
22 of the board.

23 Section 12. The state treasurer is hereby directed
24 to create and establish the Floodway Obstruction Removal
25 Fund and to credit to such fund for the removal of
26 obstructions as provided in subsection (1) of section 8
27 of this act, such money as shall be specifically
28 appropriated or reappropriated during any biennium by
29 the legislature. The Montana water resources board may
30 allocate money from the Floodway Obstruction Removal

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1 Fund for purposes provided in subsection (1) of section
2 8 of this act.

3 Section 13. (1) Any person who violates section
4 6 of this act shall be guilty of a misdemeanor and shall,
5 upon conviction thereof, be fined not more than one
6 hundred dollars, or be imprisoned in the county jail for
7 not more than ten days, or be both so fined and
8 imprisoned. Each day's continuance of a violation shall
9 be deemed a separate and distinct offense.

10 Section 14. (1) The granting of a permit under the
11 provisions of this act shall in no way affect any other
12 type of approval required by any other statute or ordinance
13 of the state, of any political subdivision or of the
14 United States, but shall be construed as an added
15 requirement; provided, that if a political subdivision
16 enacts and enforces land-use regulations which meet or
17 exceed the minimum standards of the board, the board's
18 recommendations in regard to artificial obstructions
19 or nonconforming uses shall be advisory only. The grant
20 or denial of a permit shall not have any effect on any
21 remedy of any person at law or in equity; provided,
22 that where it is shown that there is a wrongful failure
23 to comply with this act, there shall be a rebuttable
24 presumption that the obstruction was the proximate cause
25 of the flooding of the land of any person bringing suit.

26 (2) No permit for the construction of any structure
27 to be established within a designated floodway shall
28 be granted by any political subdivision unless the
29 applicant has first obtained the permit required by this
30 act, or until the board acknowledges that such structure

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1 would not be an obstruction within the meaning of this
2 act.

3 (3) No action for damages sustained because of
4 injury caused by an obstruction for which a permit has
5 been granted under this act shall be brought against
6 the state, the board, a member of the board, or its
7 employees or agents. No provision of this act shall be
8 construed as interfering in any way with the right of
9 the United States to regulate interstate commerce or
10 the navigable waters of the United States.

11 Section 15. The use of any one of the remedies or
12 powers given to the board in this act shall not
13 constitute a bar to the exercise of any other remedy or
14 power given by this act.

15 Section 16. If any section in this act or any part
16 of any section is declared invalid or unconstitutional,
17 such declaration of invalidity shall not affect the
18 validity of the remaining portions thereof.
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**HOUSE
ENVIRONMENT AND RESOURCES
COMMITTEE**

**42nd Legislative
Assembly**

1971

CON LUNDGREN

CHAIRMAN

GEORGE DARROW

VICE-CHAIRMAN

13 MEMBERS

10 MEETINGS

46 BILLS

30 HOURS 15 MINUTES

**Hallie M. Weydemeyer
Secretary**

January 30, 1971

The Environment and Resources Committee met at 10:30 a.m. in the Governor's Reception Room with a quorum present and Chairman Lundgren presiding.

Rep. Burnett, Dist. 13, spoke as the author of H.B. 513 which would provide for payment of disposal or recycling of newspapers which are published five days a week in the state. He read an editorial from the Missoulian. His statement is attached and becomes a part of the record. (exhibit 1).

Rep. Dale Svardsten, Dist. 27, spoke as a sponsor and proponent of H.B. 513. He said in World War II he had worked on paper drives and the paper had been recycled.

Mr. Bill Cordingley, publisher of the Great Falls Tribune, said he represented quite a few of the newspapers in opposing H.B. 513 and introduced others that spoke against the bill.

Mr. Bob Ross, business manager of the Missoulian, spoke in opposition to H.B. 513. He stated there were only three recycling plants in the United States today and the collection and transportation costs would make recycling prohibitive. He said the public just won't separate newspapers from the rest of the garbage. He stated present disposal methods appeared to be the best solution to the problem so far. Research was being done, he said. The bill would constitute a tax on just local newspapers and should include magazines and all newspapers. (exhibit 2 becomes a part of the record)

Mr. George Remington, publisher of the Independent Record, Helena, spoke in opposition to the bill. His statement is attached and becomes part of the record as exhibit 3.

Mr. Duncan Campbell, publisher of the Montana Standard, Butte, spoke in opposition to the bill. His statement is attached as exhibit 4 and becomes a part of the record.

Mr. Del Stewart, executive secretary of the Montana State Chamber of Commerce, opposed the bill. He said it did not recognize the economics of Montana and provisions of the bill would require more work than would make it profitable to carry out the provisions of the bill.

Rep. Burnett introduced Sherman Cook, Jr., Lincoln, who used the time for rebuttal. He admitted the provisions of the bill could be a great burden on the readers and the publishers of the papers but stated he would be willing to do it. He mentioned the different land fill dumps that had already been filled and mentioned how much is required in taxes for them. He said if the newspapers could be recycled, it would cut down 40% of the solid waste and he recommended the committee give H.B. 513 a do pass.

Mr. Strand Hillboe, publisher of the Billings Gazette, opposed the bill and showed the committee a map of the circulation of his paper. His statement and copy of the map are exhibit 5 and become a part of the record.

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Rep. McNamer asked Mr. Remington if the rate were lowered, would they resist the bill and Mr. Remington answered that he would resist the bill unless everything that goes into the dump was correctly taxed. He stated that out of town and out of state published newspapers should be taxed also.

Rep. Weeding, Dist. 6, was present to speak on H.B. 479. He said the bill would take over where other legislation has stopped and would conserve the resources underground. The bill, he said, was written primarily to protect the coal fields where damage is being done to the surface waters. He stated the bill was written by the attorney for the Water Resources Board who had consulted with the oil and gas commission and bureau of geology at Butte. He said the bill would also provide protection from broken legs from uncovered holes on the ground surface.

Mr. Jim Halloran, attorney for the Water Resources Board, discussed the bill more fully. His statement is attached and becomes a part of the record as exhibit 1 for H.B. 479.

Mr. Archie Wilson, representing the Treasure Company, stated that they do quite a bit of exploratory work using core drilling machines to determine the location of coal deposits. The driller does get permission from the surface owners to drill the holes but he was rather disturbed that there was no law on the books at the present time to protect the underground surface waters encountered in mine operations. He said coal mining is classed as mining operations and yet they do not have anything on the books that covers these drillings. There was surface water in places which are being contaminated for human consumption or livestock use and the water could be sold by negotiating with the exploratory party. He said when Rep. Weeding called him he was interested in such a bill. He stated there should be enough flexibility to allow these people to conduct a survey for coal but they did need protection for their underground waters. He stated that in some areas there could be as many as a hundred holes drilled and the water could be sold. He said they did not have enough water and under the existing laws, they could lose what they do have. He requested that the committee pass the bill.

Mr. Don Aldrich, representing the Montana Wildlife Association, stated his association was really concerned about what the drilling could do and they supported passage of H.B. 479.

Mr. Russell Chadwick, consulting geologist for the Northwest Mining Association, Spokane, Washington, representing 625 firms and individuals, spoke in opposition to the bill and his statement is attached as exhibit 2 for H.B. 479 and becomes a part of the record.

There being no further statements, the members asked questions of the witnesses. Mr. Chadwick stated he felt the bill was unnecessary because negotiations were made with the owners of the land at the present and the provisions in the bill would be expensive and useless and would constitute a harassment to the drillers. He stated the mining legislation at present does not cover the water.

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Rep. Weeding stated the bill would refer to dry holes and that seismotology was not covered. He had discussed this with the oil and gas commission.

Mr. Halloran stated the bill would include the oil and gas commission and with the present staff and the bill would require more manpower than the department had available at the present.

In answer to Rep. Darrow's question concerning occasional examination of rock outcroppings, Mr. Halloran agreed that it would cover rock outcroppings but it was not the intent to cover such geological examinations and they should not have been included. In answer to Rep. Quilici's question concerning using hand augers occasionally, Mr. Halloran stated the way the bill is presently written, that would be covered but the writers of the bill had not intended that they should be included.

Rep. Weeding stated they had not intended to write legislation which would be a harassment to the mining industry but they did feel the hard rock miners should be responsible to some agency for protection of the waters and felt it was necessary to get protection in the next two years. He agreed that perhaps some amendments would be necessary and that he would be agreeable to amending the bill.

Mr. C. Phillips Purdy, Jr., and Thomas A. Butler left statements with the secretary and are listed as exhibits 3 and 4 and become a part of the record.

Rep. George Darrow, Dist. 9, as chief sponsor of H.B. 265 spoke in explanation of the bill and went through it section by section. He asked that the newspaper clipping from the Great Falls Tribune attached as exhibit 1 for H.B. 265 be considered as his statement before the committee.

Mr. Lawrence Siroky, designing engineer for the Montana Water Resources Board, appeared in support of H.B. 265 and his statement is attached as exhibit 2 and becomes a part of the record.

Dr. George Pike, representing the U.S. Geological Survey, Helena, presented a map of the flood prone areas, and spoke in support of the bill. He stated that 4.4 million dollars worth of damage had been done in the Great Falls area in 1951. He showed graphs and charts of information the geological survey had obtained in the past years. These are listed as exhibit 4 for H.B. 265 and become a part of the record.

Mr. Phillip M. Auble, representing the Montana League of Cities and Towns, stated that this would be most valuable information to the cities and towns in planning for expansion.

Mr. Bruce F. Leeson, Ph. D., student in Natural Resources Management, Montana State University, Bozeman, spoke in support of the bill. His statement is attached as exhibit 5 and becomes a part of the record.

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Dr. Wilson F. Clark, representing the Montana Conservation Council, spoke in support of the bill. His statement is attached as exhibit 6 becomes a part of the record.

Mr. Bruce Whearty, a student at Rocky Mountain College, spoke in support of the bill and his statement is attached as exhibit 7 and becomes a part of the record.

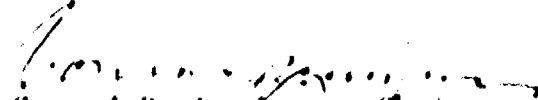
Mrs. Elizabeth Smith, Bozeman, representing the Montana Wilderness Association, stated her association strongly supports H.B. 265.

Mrs. Darlene Grove, representing the League of Women Voters, filed statement with the secretary which is exhibit 8 in support of the bill.

Questions were asked of the author of the bill.

The meeting was adjourned at 12:15 noon.

Respectfully submitted,


Conrad F. Lundgren, Chairman

hmv

Wednesday, January 23, 1971 Great Falls Tribune 5

River 'Stretching Room' May Save Lives, Says Legislation in House

Tribune Capital Bureau

HELENA — A bill has been introduced in the Montana House of Representatives that recognizes the "right and need" of rivers to flood their banks once in a while, and that "the flood plain belongs to the river and is the natural stretching-room which the river requires to accomplish its work of moving snowmelt and rainfall downstream."

Billings Republican George Darrow's bill would set up the preventive machinery to regulate the use of flood-prone valley areas so that the damage to property and possible loss of life is prevented — loss which might occur if unwise development took place.

Darrow says, "The unhappy historical circumstances in other river valleys of the U.S. has been one of encroachment by unwise development and industrial installations into flood plain areas, followed by the inevitable floods and recurring property damage and loss of life."

Darrow emphasizes that no vast new bureaucracy would be needed to administer his proposal. Rather, the Water Conservancy Board would assume it without any significant addi-

tion to its staff. He says, "It principally enables the state to initiate action to fully use the potential services and technical assistance available from federal agencies," such as the U.S. Geological Survey and the Army Corps of Engineers.

Darrow says areas in which unwise development of flood-prone valleys has taken place "have not only been susceptible to recurrent flooding, but they have required the expenditure of vast sums of public money in the form of disaster funds and relief to flood victims, publicly subsidized flood insurance measures, and multi-million dollar 'flood control projects'."

He adds, "we have now come to realize that our unwise intrusion into flood plain areas which interferes with the need of the river to perform its normal functions is an imposition upon nature which has inevitable consequences."

Here's how the plan works: When the Water Board has assembled sufficient data through cooperation with the geological survey and the Corps of Engineers to locate the floodway of a flood that occurs at least once every 50 years, the board can then furnish the results of the study to local planning bodies

for their guidance. If the local bodies do nothing about it within one year, the board is then empowered to adopt land use regulations on behalf of the state.

The act provides that appropriate open-space uses of the floodway are to be encouraged. These uses include agriculture, certain industrial uses such as loading and parking areas which would not be damaged if flooded, and recreation areas.

Darrow says his proposed act would have immediate application in the state's three largest urban areas — Great Falls, Billings, and Missoula — and in many rural areas where recreational development is now taking place.

And as the trend toward urbanization continues, he says, so will the tendency to impinge more and more upon river floodplains which are susceptible to flood disasters.

Darrow says adoption of the bill can save the state's taxpayers "tens of millions of dollars in future expenditures of public money which will be required to cope with the resulting problems which will be brought about if encroachment by unwise development is allowed to continue into the future."

212. 265
1-23-71
Rep. Darrow
Bill 111-1

PROPONENT FOR HB 265

for

Montana Water Resources Board

by

Laurence Siroky

*Exhibit 2
N.B. -- 65
1.2.71*

The Montana Water Resources Board is in support of House Bill 265. As the population and subsequent development in this state has increased, more utilization of flood-plain areas has been made due to various aesthetic and economic factors.

Essential elements in the wise use of flood plain areas are land use planning and control. Land-use regulation of flood plain areas would allow adequate room for a large body of water to move safely through the flood-prone area and would lessen flood damage.

Currently, a flood plain study must be initiated by the County Commissioners, or a Mayor, through the Montana Water Resources Board. HB 265 will allow the Montana Water Resources Board to initiate on its own motion a flood plain study.

The flood plain program could involve local planning programs to guide development by controlling the type of use made in the flood plain through zoning or subdivisions regulation. If this type of regulation is not done on the local level, then the state would have this ability.

Also, this program would complement the development of the state water plan in its inventory phase.

The Montana Water Resources Board has been specifically designated by the Governor to coordinate the Flood Plain Insurance Act of 1968. This Act makes limited amounts of flood insurance available to property owners by means of a Federal subsidy. In return for this subsidy, the act required that State and local governments adopt and enforce land use and control measures that will guide future development of land in flood prone areas in order to avoid or reduce future flood damage.

In other words, this study of the flood plain areas must be initiated before the state of Montana can obtain Flood Plain Insurance.

Exhibit #3
to B-265
see file
1-20-71

Name of Map

River

Northwest Great Falls

Missouri

Northwest Missoula

Clark Fork

Savoy

Milk

Silecia

Yellowstone, Rock Creek

Threemile Reservoir

Milk

Southeast Missoula

Clark Fork

Southwest Great Falls

Sun, Missouri

Southwest Missoula

Clark Fork

Whately

Milk

Yegen

Yellowstone

8-4-3
H A 205
L. A. F. H.
1-30-71

QUADRANT MAPS WHERE THE AREA COVERED BY THE 50-YEAR
FLOOD HAS BEEN APPROXIMATELY DELINEATED

These maps are available, free of charge, from
the U.S. Geological Survey office in Helena, Mont.

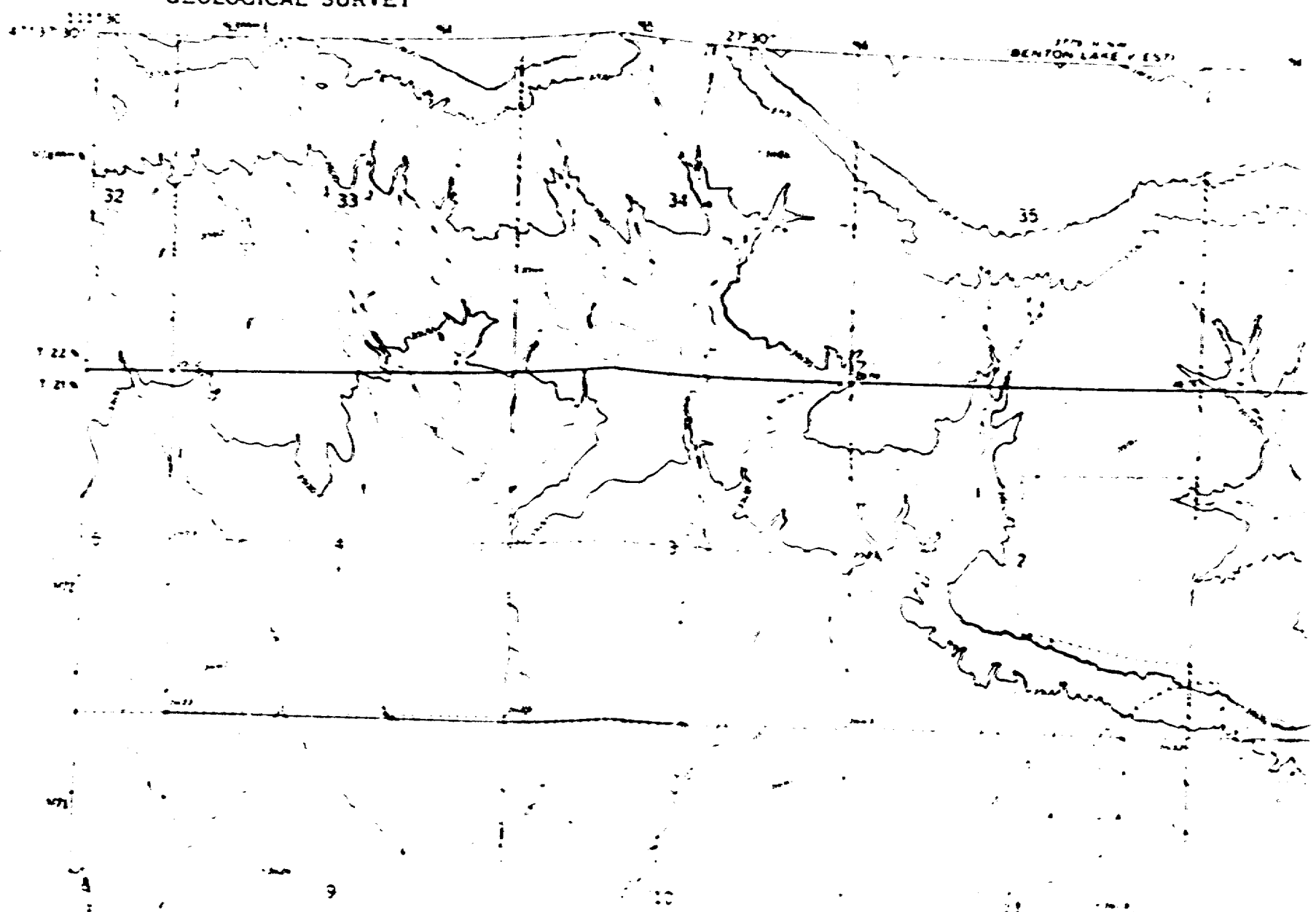
<u>Name of Map</u>	<u>River</u>
Brisbin	Yellowstone
Billings East	Yellowstone
Chinook	Milk
Coburg	Milk
Columbia Falls South	Flathead
Creston	Flathead
Dodson Dam	Milk
Fort Belknap	Milk
Glasgow	Milk
Grable Coulee	Milk
Harlem	Milk
Havre	Milk
Kalispell	Flathead
Laurel	Yellowstone
Livingston	Yellowstone
Manchester	San
Montana	Yellowstone, Rock Creek
Mossmain	Yellowstone
Northeast Great Falls	Missouri
Northeast Missoula	Clark Fork

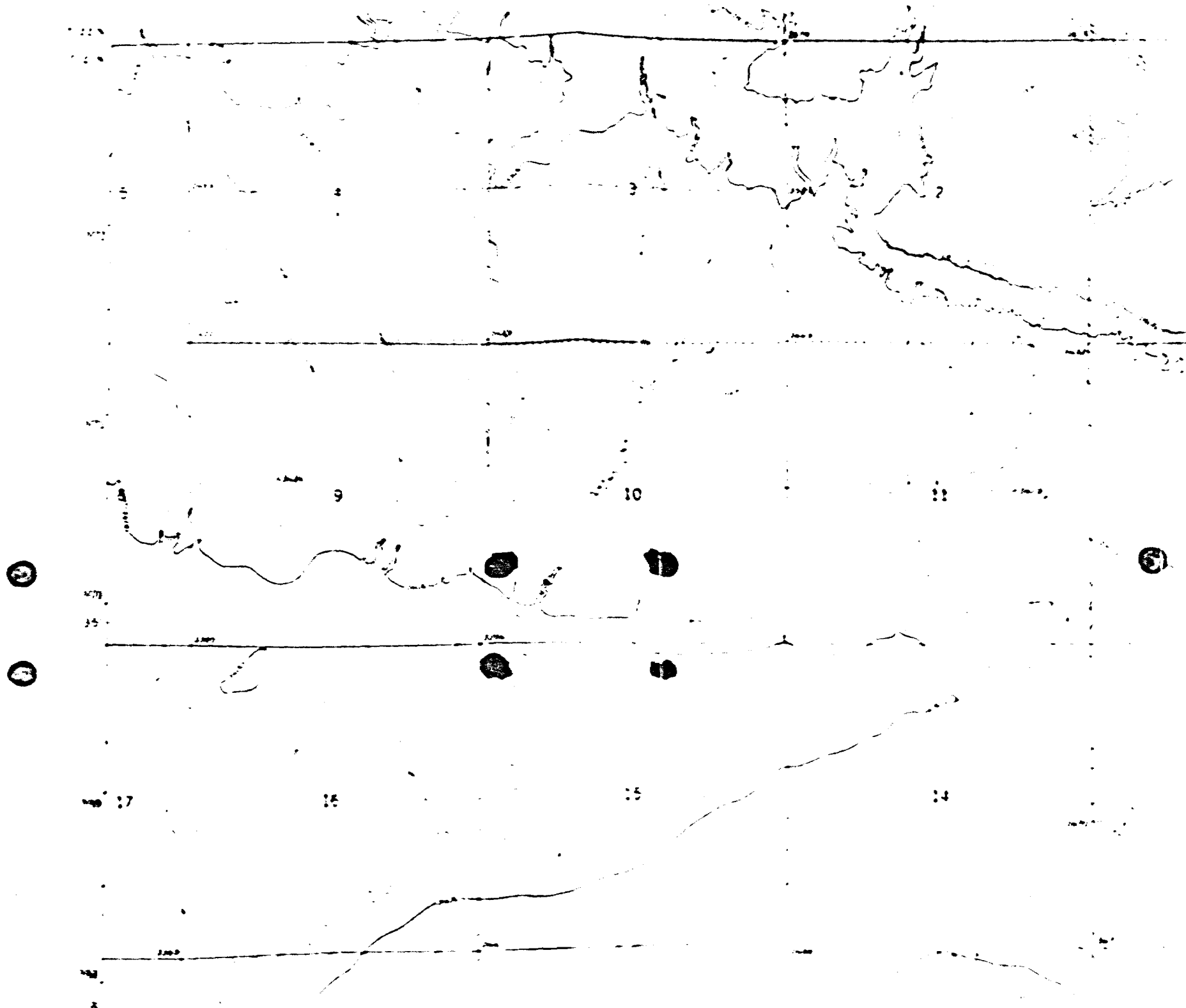
W. 100' 100' 100'

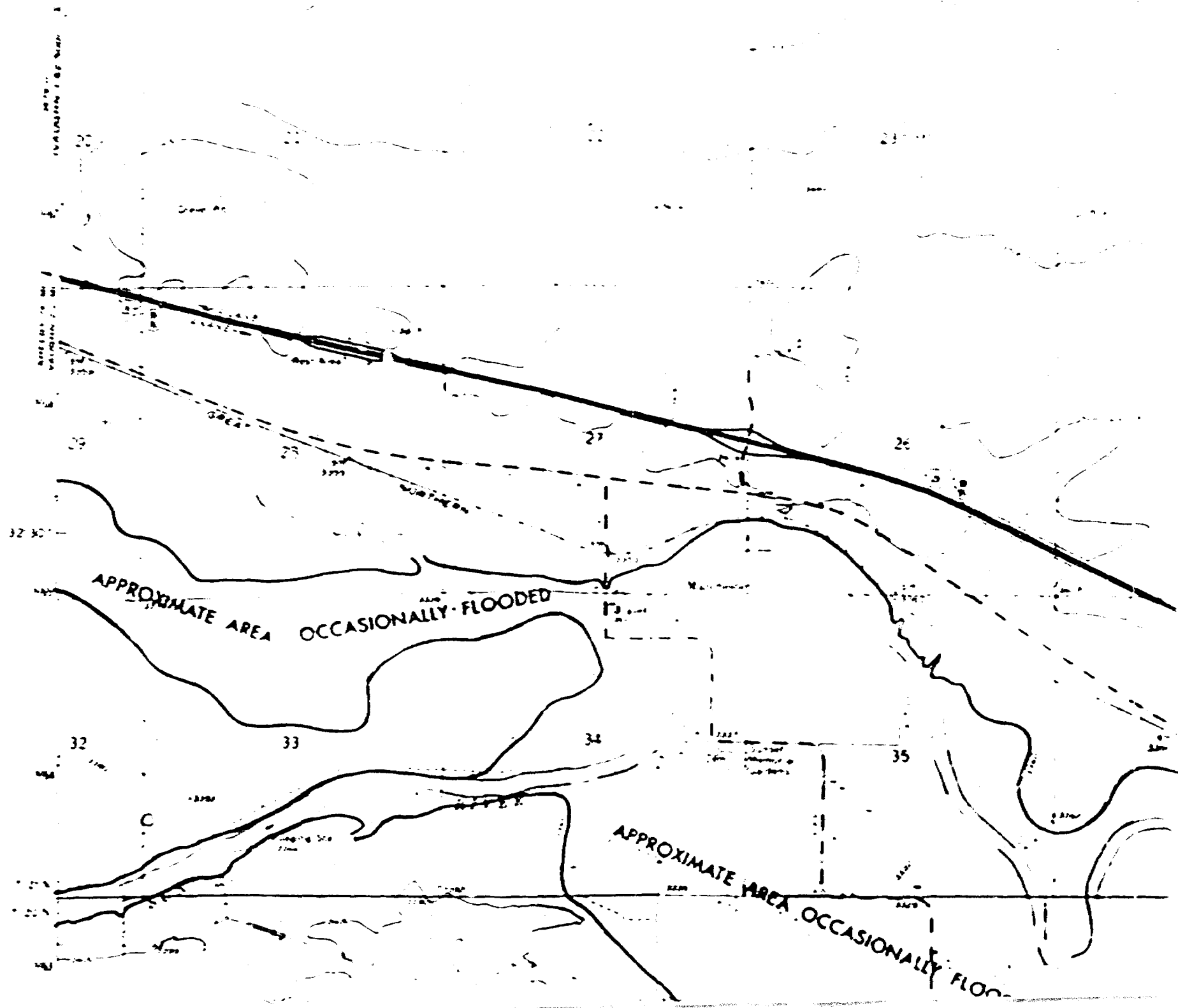
UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

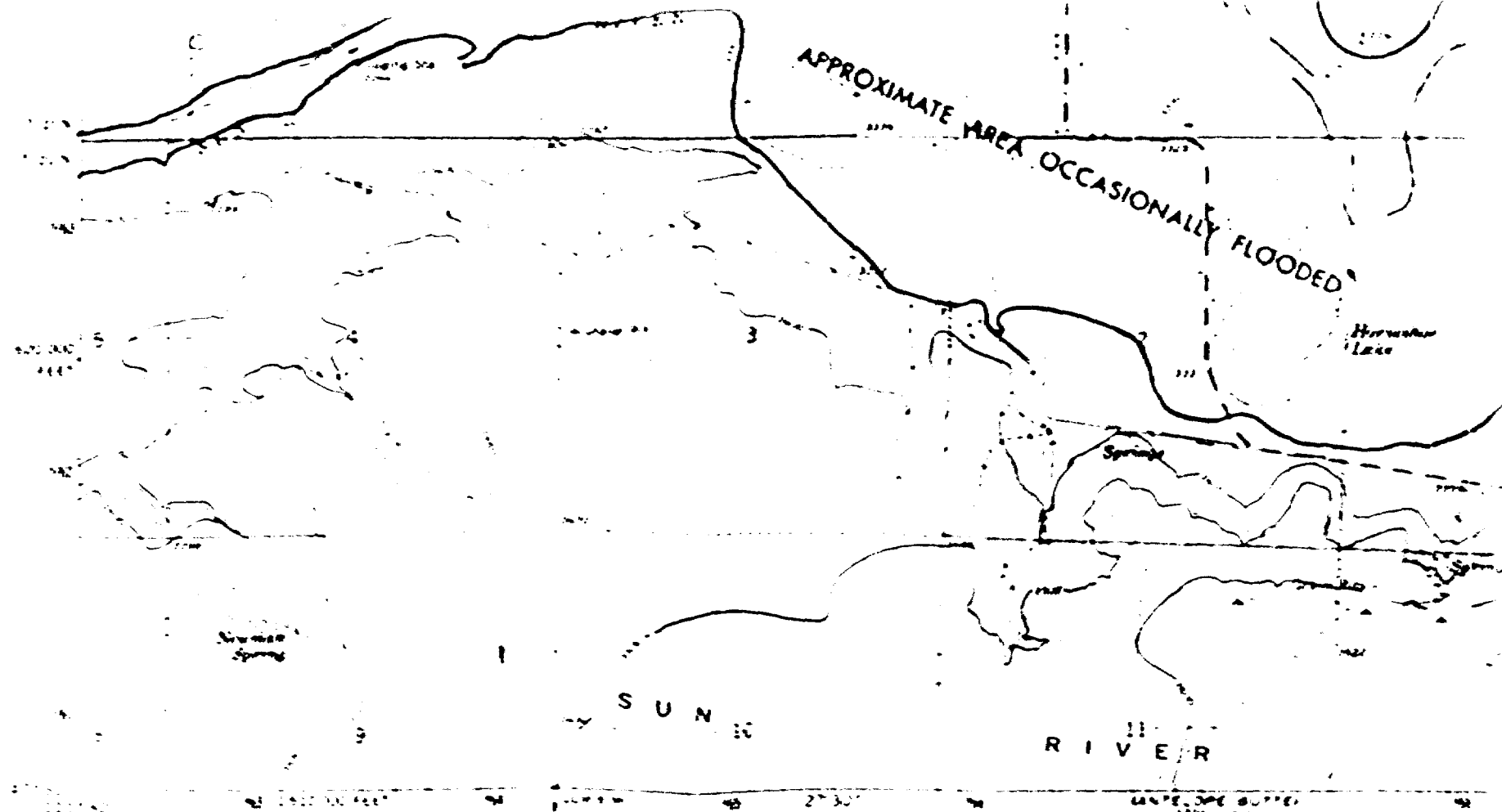
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4-20
3-20
2-20
1-20

MAP OF FLOOD-PRONE









The purpose of the flood-prone area maps is to show to administrators, planners and engineers concerned with future land developments those areas that are occasionally flooded. The U.S. Geological Survey was requested by the state legislature to prepare these maps as represented in House Document 101. The flood-prone areas have been delineated by the Geological Survey on the basis of readily available information.

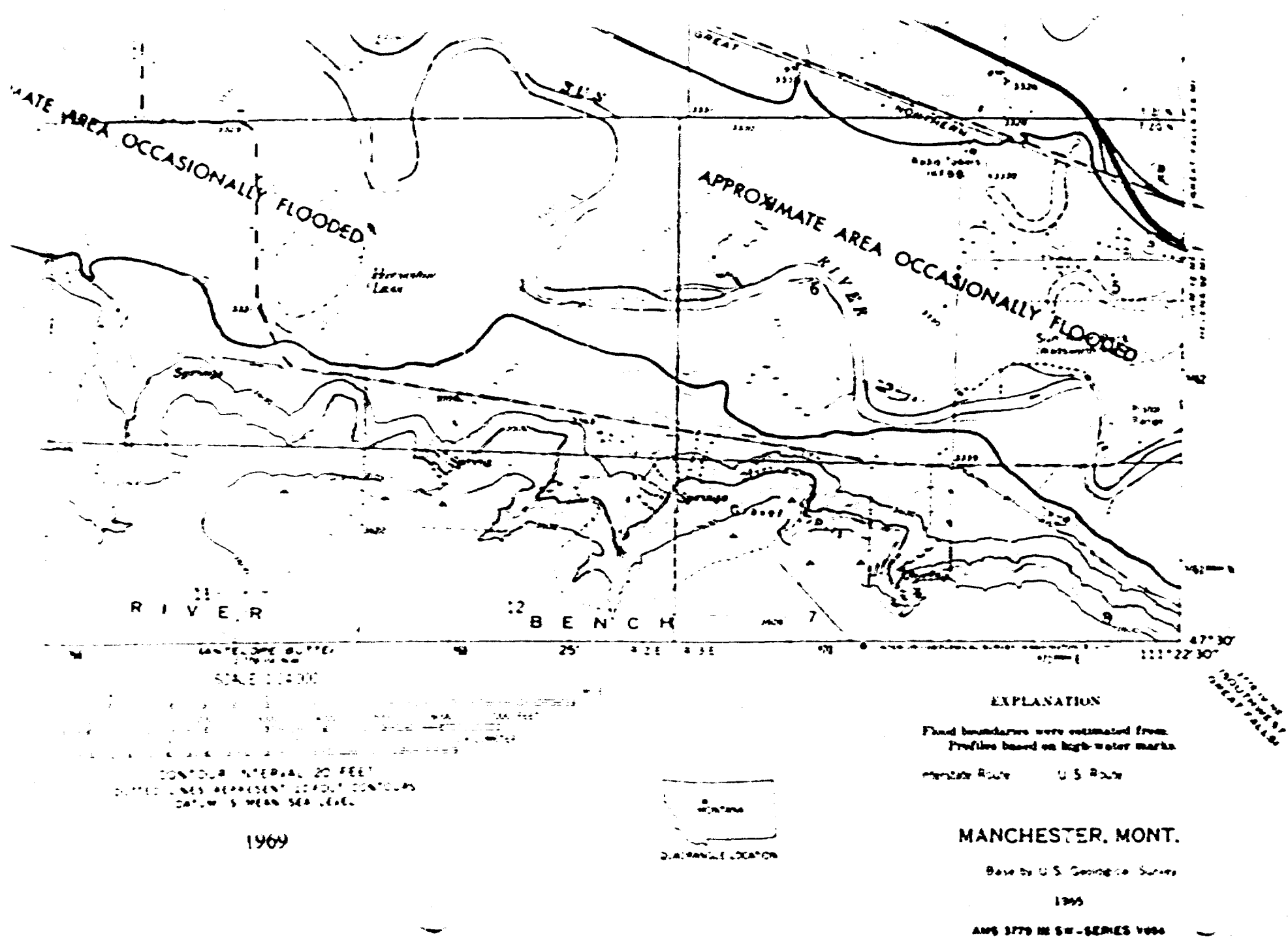
Flood-prone areas were delineated for those areas that meet the following criteria: (1) Urban areas where the upstream drainage area exceeds 25 square miles; (2) rural areas in flood regions where the upstream drainage area exceeds 100 square miles; and (3) rural areas in unincorporated regions where the upstream drainage area exceeds 250 square miles.

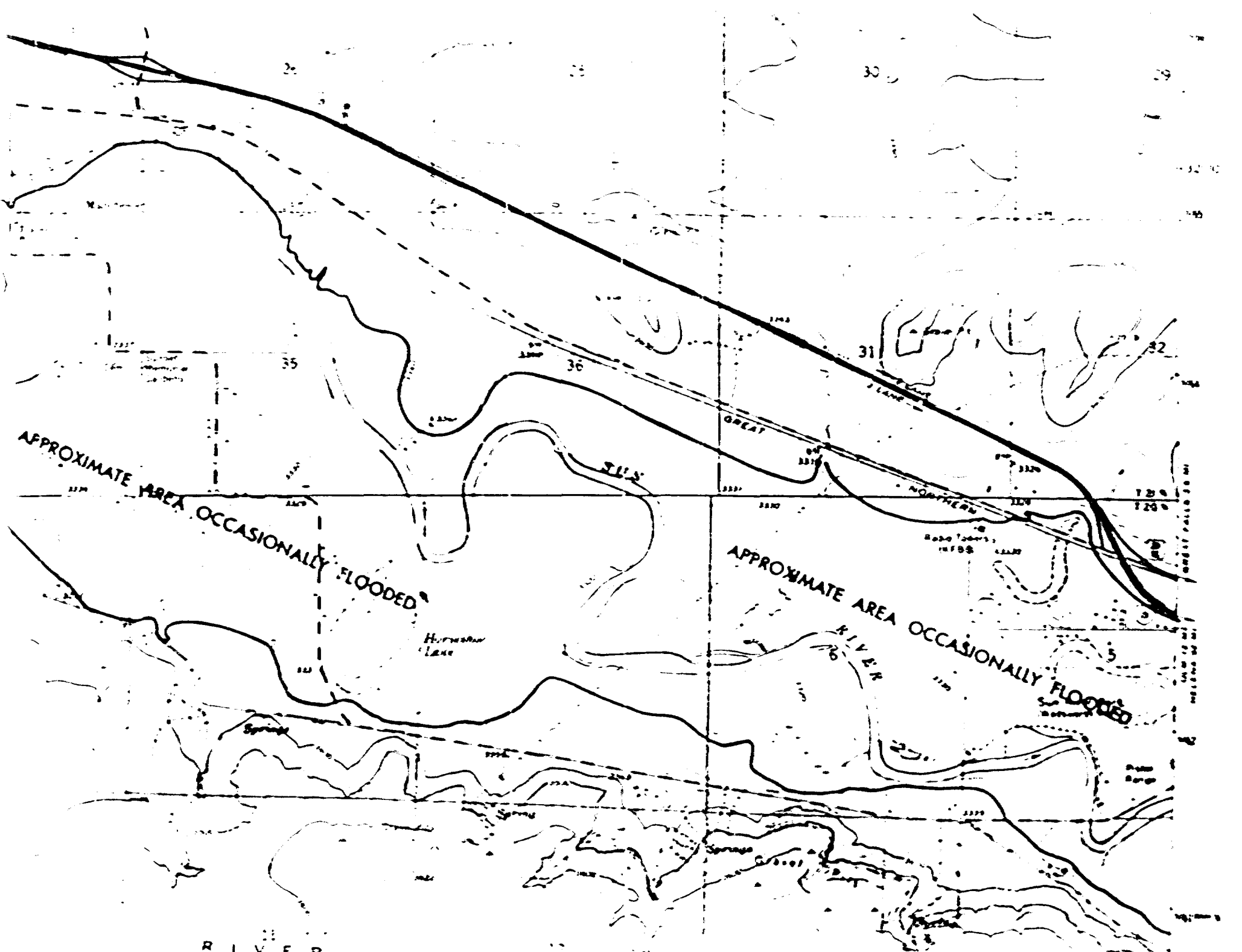
The map indicates only areas that may be occasionally flooded, and provides no information on the frequency, depth, duration, and other details of flooding. Larger areas than those shown on the map may be inundated by less frequent floods.

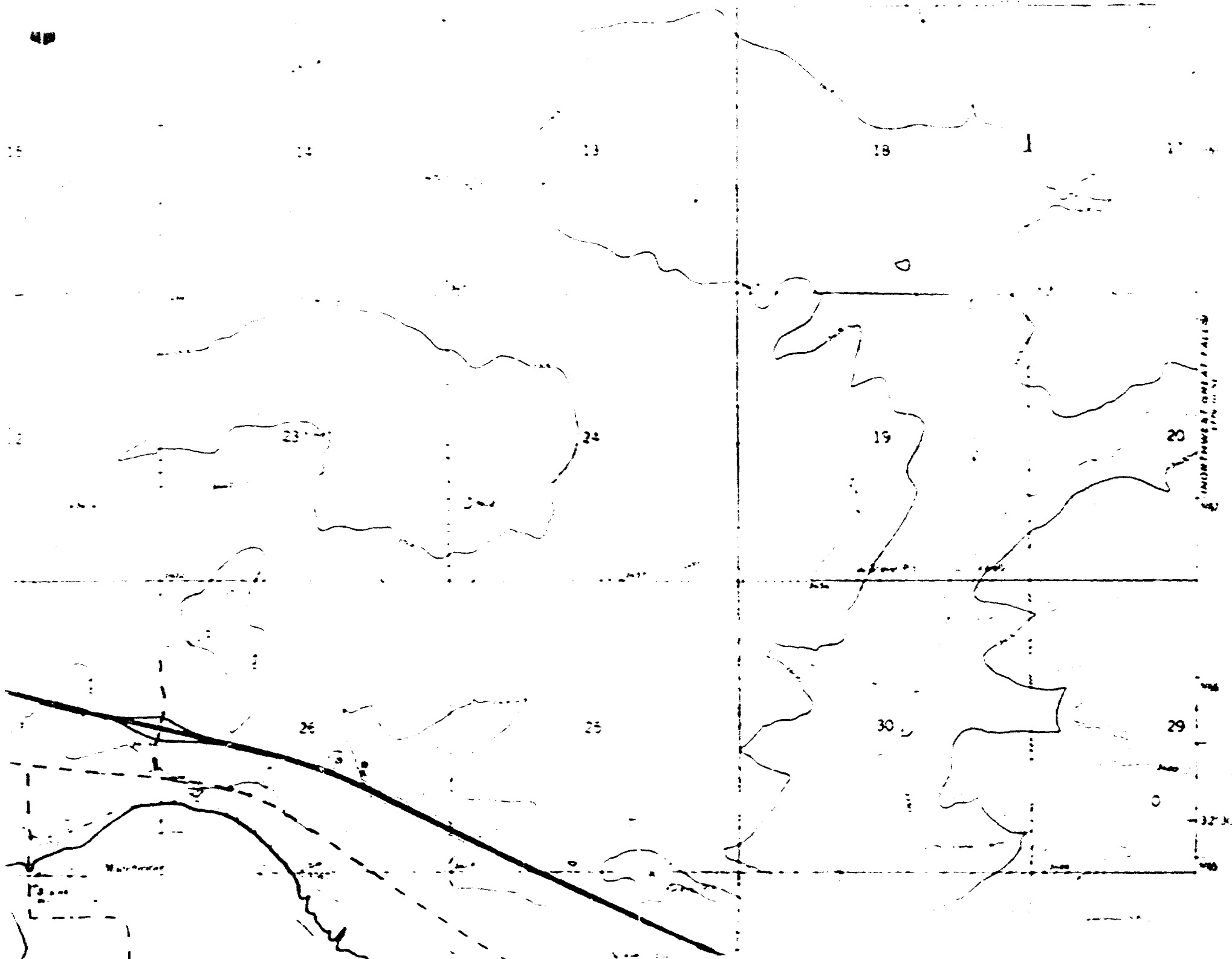
Flood hazard reports provide the detailed flood information that is needed for economic studies for formulating zoning regulations, and for setting design criteria to minimize future flood losses. If detailed information, such as that contained in the flood hazard reports, is required, contact the U.S. Army, Corps of Engineers, the U.S. Geological Survey, or the Tennessee Valley Authority in the areas of their jurisdiction.

CONTOUR INTERVAL 20 FEET
DOTTED LINES REPRESENT 10-FOOT CONTOURS
DASHES MEAN SEA LEVEL

1969

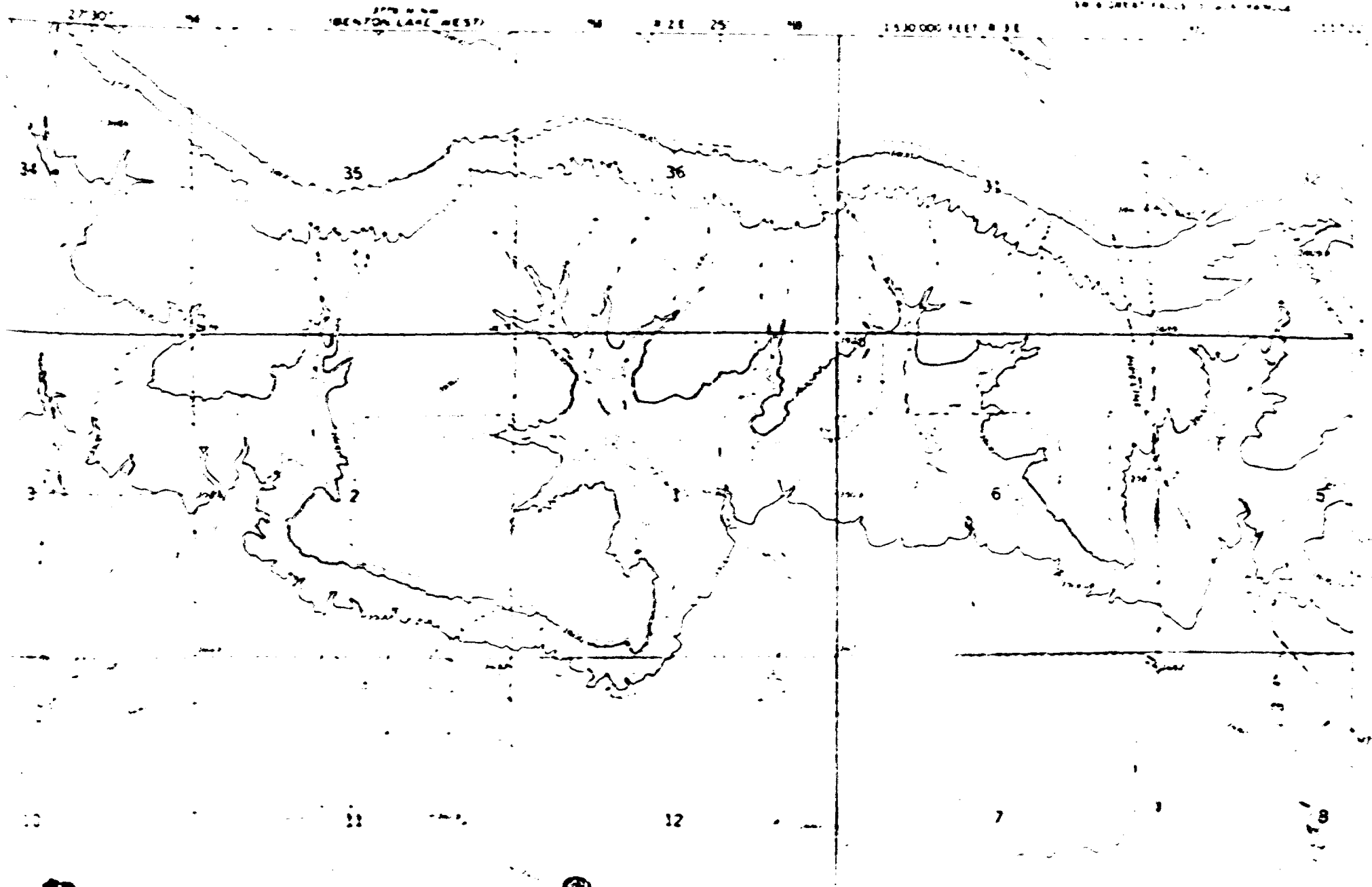






MAP OF FLOOD-PRONE AREAS

MANCHESTER QUADRANGLE
MONTANA - CASCADE CO
7.5 MINUTE SERIES TOPOGRAPHIC
1:50,000 SCALE



64
J. 30-71

Testimony on House Bill No. 265 presented to the House, Environment and Resources Committee, 62 Legislative Assembly, State of Montana by Bruce F. Leeson, Ph.D. student in Natural Resources Management, Montana State University, Bozeman, Montana.

It is a well-known but sometimes forgotten fact that water not only runs downhill but that it also rises under certain circumstances. Every spring this fact is forcefully and disagreeably established once more in the minds of residents of communities who have foolishly built too close to the rivers' edge. Floods are an act of God; flood damage results from the acts of men. In the absence of clear and present danger, the typical citizen is not easily persuaded to avoid or protect himself from flood hazard and in most instances, he does not assume an adequate share of the costs resulting from his irresponsibility. No matter how serious their encroachment on the flood plain, they bear a minor fraction through payment of general taxes, of the public cost of relief and repair, and pay only when they experience direct loss of life or uninsured property. The general public, by bearing a major part of the cost of flood protection and lessening the individual's damage costs, further subsidizes their use of the flood plain. The costs of prevention and loss are staggering.

Federal investment in flood protection and prevention between 1936 and 1966 amounted to \$7 billion dollars. The current annual expenditure for such programs exceeds 500 million dollars, but it has not prevented the annual flood damage from increasing since 1936 to a current loss estimate of one billion dollars per year. In Montana, money spent on ASCS, C-8 streambank stabilization projects for the years 1967, 68' and 69' amounted to \$1,768,572. All this money is spent to minimize flood hazard while at the same time we allow virtually uncontrolled development in other parts of the watershed to partially negate the beneficial effects. The man-hours spent by the city of Bozeman in flood control of Sourdough Creek has risen from 1207 in 1964 to 2031 in 1970. During this same period, new houses were located every year in areas which flooded the previous year. Because this development occurred outside of the city limits, it could not be controlled and the public just has to 'cough up' more money and energy every year to help these people out of their self-imposed disasters.

Building on flood plains hurts people. It is not only those in the inundated houses but also the people downstream. When a flood plain is laced with streets, roads, and parking areas and the natural ground cover is removed, trimmed and clipped, the amount of water that runs off is greatly increased and every rain is a potential flash flood. An average rooftop of twelve hundred square feet will shed 750 gallons of water in a one-inch rain-fall. Put together a subdivision of rooftops and you have a veritable flood-producing mechanism. By allowing developers to waterproof the flood plains, communities have been increasing the flood damage potential faster than the engineers can build dams or channelize the rivers. Just one shopping center and parking area built on the flood plain can create enough extra runoff to require the construction of tremendously expensive flood control structures.

The public pays the whole bill and retroactively provides a subsidy to developers for building where they should not.

We apparently take little heed of the fact that the flood plains often are the best looking parts of our local landscape and generally represent the most valuable and desirable location of local community-based recreation. A flood plain is a great sponge. When the rains and floods come, it soaks up an enormous amount of water, returns a good part of it to the underlying water table, and then over a period of days and weeks, slowly releases the rest. However, the inherent danger of being in the path of potential floods depresses the market value of this land and consequently draws the attention of unscrupulous developers. Septic tanks and wells are punched in after great care has been taken to insure that the State Board of Health tests are done at just the right time. Mr. and Mrs. Unsuspecting take proud possession of their new home, unaware of the potential danger that rising water tables in the spring may be putting coliform in the drinking water of all the little Unsuspectings. But the crisis doesn't seem very real until the toilet is flushed and you get sicker back than you tried to give away. This situation is not uncommon. I could relate to you a story of just such a development which enjoyed on SBA loan and FHA mortgages.

Montana communities, although they have seldom experienced 'killer' floods, unquestionably do have flood problems. The U.S. Army Corps of Engineers in 1967 determined that 30 Montana urban communities including all the major growth centers had existing flood problems. In most of the tributary valleys, 75 to 90 percent or more of the cumulative flood losses are caused by the comparatively small storms that occur on an average of once in 10 years or oftener. One of these small floods on the West Gallatin River in the spring of 1970 destroyed land worth \$35,000, structures worth \$28,330 and crops worth \$32,000. This represents approximately 1/3 to 1/2 of the people involved. The Gallatin County Commissioners have spent \$10,000 on dikes and anticipate spending \$100,000 for rip-rap. But all they can do is spend money to clean up a problem when they have no authority to prevent people from intensifying the hazard and potential damage. All local government and other planning agencies in Gallatin County expressed the opinion to me that if flood plain zoning powers were available, it could be put to very good use in Gallatin County.

Alternatives to planned development on flood plains are dams and reservoirs, levees or floodwalls, channelization and watershed treatment. These systems are effective and have the advantages of conserving water and preventing erosion. The biggest disadvantage is the high cost of construction and continued maintenance. In addition, many Montanans are loath to condone dam building and channelization. Planned land development, which is the method proposed by House Bill No. 265 probably has the greatest return for the welfare of the general public, both in terms of economic and social values when balanced against the same costs.

Planned land-use development rather than attempting to lessen the flood implies the adoption of legal tools whereby development can be guided in such a manner as to avoid the flood. An examination of House Bill No. 265 reveals that the proper steps towards flood plain planning have been embodied in the proposed legislation. For the first time, Montana's communities and counties

could have the means whereby a more effective utilization of resources could be realized while at the same time reducing unnecessary flood damage expenditures. If the forecasted flow of immigrants to Montana materializes, the imperative need for this legislation is obvious. We cannot continue to develop our resources in the way we have when we are aware of the dangers and costs involved. Other people in other places have had similar experiences and presently have developed flood-plain land use controls with favorable success. Two examples are the Conservation Authorities of Ontario and the Tennessee Valley Authority. Either of these organizations will supply interested persons with helpful information.

House Bill No. 263 is particularly relevant at this time because of the recent availability of National Flood Insurance authorized by the Housing and Urban Development Act, Public Law 90-448. Presently, flood insurance is virtually unobtainable due to the high risk and correspondingly high premium cost. The procedures outlined in House Bill No. 263 would put participating communities into a qualifying position for this insurance which the Federal Government is underwriting.

In conclusion, it is evident the many Montana communities do need and can effectively use the land planning tools embodied in House Bill No. 263. If Montana is to develop and maintain the quality of environment which presently is of such great concern to its citizenry, then it is the responsibility of this legislature to provide them with proper and effective legal implements.

12. 75
January 30, 1971

Testimony on HB 265 on

Management of the Floodways of Watercourses

to: Environment and Resources Committee of the
Montana House of Representatives

by: Dr. Wilson F. Clark

*Note: as of 1/30/71. Authorized to
Speak for the bill, by the Board
of the Montana Conservation Council*

Members of the Committee:

I'm Dr. Wilson F. Clark, Chairman of the Division of Science and Mathematics at Eastern Montana College in Billings. I'm speaking here as an individual and as a person who for twenty years has been actively and professionally involved in conservation education -- with sixteen of those years in Montana. I'm also a past President and am now a director of the Montana Conservation Council, and Coordinator of the Billings/Yellowstone Environmental Council.

HB 265 is, I feel, a long-overdue bill, and an important adjunct to land-use planning. I've gone over this bill in detail, and see no basic flaws in its concepts. Representative Darrow is to be complimented on doing a thorough job.

My purpose here is to review briefly the geologic and historical perspective in which this bill should be examined.

Floods are a natural thing. Man has simply made them worse by his management of land. Flat bottom-land flood plains are also natural things -- and are the geologic consequence of flooding. Flood plains are the "safety valves" of rivers.

Throughout the history of mankind these same flat bottom-lands have been farmed, towns have been built there, and railroads and highways have been run there. And in consequence of man's invading the flood plains, when floods come they do a tremendous amount of damage.

To protect his ill-placed towns and structures, man has developed levees or dikes, and has built huge dams. The only things levees and dikes do is to pass the flood problem on to people down stream. The dams may do a bit more -- but their flood control aspects are often over-rated.

The Mississippi River is the classic example of a problem river. The flood plains were heavily settled, floods came, and levees were built -- until now levees extend some 1500 miles upstream. In some areas, the bottom -- the bed -- of the river is now above the surrounding flood plain as a result of the dynamics of successive siltting with the rise and fall of flood waters.

The problem is simply that we -- man in general -- have not recognized the land-use limitations of flood plains. We build there. We get flooded. And then, we scream for somebody to help us rebuild (usually in the same place), or ask the Corps of Engineers to build dikes and structures. We've never admitted that we've made poor land-use decisions.

HR 265 is basically designed to identify flood plains, and to restrict or prohibit uses which, if flooded would result in serious monetary losses or possible loss of life, or danger to public safety. Agricultural use, recreational use, uses involving non-permanent structures or low cost structures, and similar uses make good sense. But don't build a trailer court there -- as has just been done near Billings. Don't allow residential or business structures there -- as one can see all over the United States. Don't continue to ignore nature's vivid signals. Instead, recognize that we can make good land-use decisions.

HR 265 is a sound, sensible, and long-needed bill. I solicit your favorable action on it.

1/30/21
27 3961
H. O. 265

On three wharves, a native Montanan and Trust of
Rocky Mountain College.
Chairman Lundgren, members of the ~~Environment and Resource~~
Committee ~~at the meeting~~

It seems that the rationality of H. R. 265 is not in question.
I think we can all agree

that rivers flood,
that floods cause extensive damage to buildings ^{and human lives} in
their floodplains,
that this damage can be mitigated by definition and
recognition of these floodplains and by
prohibiting construction in them.

~~and that even if the government would not act~~
This bill's logic appears unquestionable.

What is at question here is our right as a society,
and your right as legislators, to limit personal
freedom on private land in the public interest.

There are three reasons why I feel that this
limitation is justified in this case.

First: Constructing an obstruction on a flood plain
creates a possible diversion of flood water
to otherwise safe land. Floods are, by
their very nature, not entirely predictable.
Should a developer have the right to
enlarge this factor of unpredictability
and inflict his neighbor with the
inconvenience of living or working in a flood
path?

economic
path?

Buildings obviously necessitate facilities and the second establishment of sewage disposal systems and septic fields in a flood plain creates enormous possibilities of downstream water and well pollution. I don't relish the prospect of making dysentery a way of life.

Finally: I think that I, as a veteran taxpayer in this state, have the right to see that my tax money is used to establish reasonable use of our state's waterways, instead of providing temporary ^{and expending} relief from flooding of ^{entirely} developed flood plains, such as occurred in Great Falls, 1964. Such disasters are avoidable, and we have opportunity now to prevent such disruptions to the state economy.

Mr. Chairman, I also bear a message from the Environmental Society of the University of Montana at Missoula. This organization is composed of approximately 80 concerned students, primarily Montanians, and they have asked me to inform you that they wholeheartedly support HB265.

Thank you

LEAGUE OF WOMEN VOTERS OF MONTANA

Testimony Prepared for the 42nd Legislative Assembly
House Bill 265

10-20-71
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The League of Women Voters supports policies which provide for long-range comprehensive planning and management of water resources. There are few areas where the benefits of wise planning and land use are so apparent and the violations are so devastating as along our floodplains.

"Flood plains provide natural open, undeveloped space and offer tremendous opportunities for wildlife and recreational development. Frequently, high value agricultural crops can be produced upon them in years of normal rainfall. However, because homes, factories and other structures are built in the wrong places, property and lives are often lost on flood plains. Annual property damage on flood plains exceed \$1 billion, and damages are increasing."

President's Council on Recreation and Natural Beauty

When serious flooding occurs, it becomes the responsibility of the whole community.. the state..the nation. It is also our responsibility to prevent losses caused by flooding where it is possible. This is the purpose of HB 265.

It is the kind of legislation the League encourages...specifically because it incorporates procedures that supply information and it encourages intelligent weighing of plans...it encourages citizen participation in decisions...it provides for comprehensive planning and management on a river basin and regional basis.

"Natural waterways that are used by flood waters have in effect, an easement placed upon them by nature for intermittent use. Man's encroachment into the flood plain violates the natural easement and often affects the vested public interest."

ENVIRONMENT & RESOURCE COMMITTEE - HB-265
January 30, 1971

I am Don Aldrich, representing the Montana Wildlife Federation.

Legislation that recognizes the public interest in management of flood-prone lands is supported by the Montana Wildlife Federation. Historically developments on these lands have deprived us of some of our best pasture, haylands, and wildlife habitat, and in the end, have necessitated expensive stream bank protection projects.

HB-265 proposes to regulate development within the boundaries of a 50-year flood, provide technical assistance to land owners, and coordinate local, state and federal interests to assure plans recognizing public long-time values.

In considering projects and developments within the known flood plain, the administering agent of this act will consider public health, security of property in times of flood, and the possibility of the proposal to increase flood heights and velocities.

The administering agency, the Montana Water Resources Board, is given the authority to make exceptions to the regulation prohibiting artificial obstructions or nonconforming uses within the flood plain boundary if it becomes necessary.

A grandfather clause protects existing artificial obstructions and nonconforming uses.

Section 6, subsection 2, page 7, lines 10 through 28, identifies acceptable uses of flood-prone lands. I would question the acceptability of fish hatcheries unless they were limited to producing fish that are native to the contiguous stream. Without this limitation, it would be possible to ^{occasionally} introduce an exotic species that might be detrimental to the ecology of the stream.

Section 6, subsection 3, adequately identifies nonconforming uses.

I feel that HB-265 is essential to Montana waterway developments. Stream obstructions, channel changes, and construction on flood plains have created expensive problems.

Highland, Montana 59450
February 3, 1971

Representative Conrad Lundgren
Chairman of
Committee on Environment and Resources

Dear Mr. Lundgren:

I most sincerely urge you and your committee kill HB 265.

In 1953 a good share of the valley that Highland Creek runs in was under water, at least half of our land on the creek bottom was under water then, the rest of it has been under in times past. A good share of the rest of the streams and rivers of the state have about the same conditions. It would be a near impossibility to operate in these valleys should all rules and regulations in HB 265 be put in effect. Again I urge you to kill HB 265.

Sincerely,



C. E. "Bud" Lucas

BILLS HEARD BUT NO ACTION TAKEN AS OF FEB. 3, 1971

ENVIRONMENT AND RESOURCES

HOUSE BILLS: 33, 157, 182, 265, 316, 479, 507,

BILLS TO BE HEARD AS OF FEB. 3, 1971

HOUSE BILLS: 243, 244, 368, 471, 500, 548,

HOUSE JOINT RESOLUTIONS: 33, 41,

SENATE BILLS: 55, 134,

SENATE JOINT RESOLUTIONS: 4, 12, 16, 23, 28

3. 13. 71
February 8, 1971

The Committee on Environment and Resources met at 8:30 p.m. with a quorum present and Chairman Lundgren presiding.

Rep. Anderson moved that H.B. 265 do not pass. He said the Montana Water Resources Board had far more duties than they can handle and that there was some language in the bill that he did agree with.

Rep. Darrow stated he opposed the motion. He said the U.S. Geological Service has this information available and other agencies had additional information available. He reminded the committee members of the testimony given concerning the information that is available if the state enacts this legislation. He stated the information is sent to the city-county council planning board for its use and the it could readily be handled by their present staff.

Rep. Lanthorn stated he would like to make a substitute motion that H.B. 265 do pass, seconded by Rep. Johnston. Rep. Lanthorn said something like this would be a good thing and he thought it could be handled financially, too.

Rep. McNamer asked what line 2 on page 8, converting these flood lands to agricultural uses, would do to erection of buildings in the flood areas. Rep. Darrow stated it referred to the 50-year flood stage and he had discussed this with the U.S. G. S. and it would not outlaw diversion dams. He said the main object was to govern the growing urban areas to keep expansion from growing on the flood areas. He said the open spaces would be used for agriculture, parking places, golf courses, etc.

The motion that H.B. 265 do pass carried with 2 opposing votes.

Rep. Ainsworth reported on the sub-committee recommendations on the river bills. He said they recommended that four of the bills do not pass and the other would be a statement of policy and the department of fish and game be authorized on a permissive basis that during the next biennium they discuss with the people in the areas and try to arrive at some agreement which rivers might be considered as recreation or scenic rivers around Montana. He said he had talked with Rep. Fagg and Rep. Stalgmiller and the people from the Smith River. He said Rep. Stalgmiller recommended that it be killed and some type of program be written in a committee bill. He asked Mr. Darrow to explain his proposed amendments and Rep. Darrow discussed the amendments in detail. Rep. Ainsworth suggested the committee select from H.B. 500 or H.B. 182 which bill it felt would be the best bill and that H.B. 182, H.B. 157, and H.B. 548 do not pass.

Rep. McGrath moved that as amended, H.B. 182 do pass. Rep. Scott moved a substitute motion that the amendments proposed by Rep. Darrow be adopted, seconded by Rep. Johnston and the motion carried.

Rep. Ainsworth moved that H.B. 157 do not pass, seconded by Rep. Scott and the motion carried.

C O M M I T T E E
O N
I R R I G A T I O N A N D W A T E R
1 9 7 1

SENATOR GORDON MCGOWAN
Chairman

Joyce Russell
Secretary

1971

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Photocopied from collections in the Montana Historical Society Archives

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February 23, 1971

The meeting was brought to order at 12:15 p.m. in Room 402 by Vice-chairman Siderius. A quorum of members was present.

HOUSE BILL #265: Representative Darrow, the author of the bill, gave a talk then read through the bill bringing out the important parts of the bill. Representative Darrow then called witnesses and they are as follows:

Mr. Winton Weydemeyer
Montana Conservation Council

Mr. John H. Morrison
Montana Water Engineering & M.W.D.A.

Mr. Bruce F. Leeson

Mr. Barney J. Granstron
U.S.G.S.

Mr. Lawrence J. Suoky
Montana Water Resources Board

Their written statements are enclsed with these minutes. Witnesses were excused.

Senator Turnage moved and it was seconded by Senator Carl to ADOPT the amendments. All were in favor. It was moved by Senator Turnage and seconded by Senator McOmber that HB #265 BE CONCURRED IN AS AMENDED All were in favor.

SENATE RESOLUTION #12: Senator McOmber moved and Senator Deschamps seconded that SR #12 BE ADOPTED. All were in favor.

Meeting was adjourned.


Siderius Vice Chairman

QUADRANGLE MAPS WHERE THE AREA COVERED BY THE 50-YEAR
FLOOD HAS BEEN APPROXIMATELY DELINEATED

These maps are available, free of charge, from
the U.S. Geological Survey office in Helena, Mont.

<u>Name of Map</u>	<u>River</u>
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Fort Belknap	Milk
Glasgow	Milk
Grable Coulee	Milk
Harlem	Milk
Havre	Milk
Kalispell	Flathead
Laurel	Yellowstone
Livingston	Yellowstone
Manchester	Sun
Montagua	Yellowstone, Rock Creek
Mossmain	Yellowstone
Northeast Great Falls	Missouri
Northeast Missoula	Clark Fork

Name of Map

River

Northwest Great Falls

Missouri

Northwest Missoula

Clark Fork

Savoy

Milk

Silesia

Yellowstone, Rock Creek

Threemile Reservoir

Milk

Southeast Missoula

Clark Fork

Southwest Great Falls

Sun, Missouri

Southwest Missoula

Clark Fork

Whately

Milk

Yegen

Yellowstone

Presidential Documents

Title 3—THE PRESIDENT

Executive Order 11296

EVALUATION OF FLOOD HAZARD IN LOCATING FEDERALLY OWNED OR FINANCED BUILDINGS, ROADS, AND OTHER FACILITIES, AND IN DISPOSING OF FEDERAL LANDS AND PROPERTIES

WHEREAS uneconomic uses of the Nation's flood plains are occurring and potential flood losses are increasing despite substantial efforts to control floods; and

WHEREAS national and regional studies of areas and property subject to flooding indicate a further increase in flood damage potential and flood losses, even with continuing investment in flood protection structures; and

WHEREAS the Federal Government has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually disposes of thousands of acres of Federal lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

WHEREAS the availability of Federal loans and mortgage insurance and land use planning programs are determining factors in the utilization of lands:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. The heads of the executive agencies shall provide leadership in encouraging a broad and unified effort to prevent uneconomic uses and development of the Nation's flood plains and, in particular, to lessen the risk of flood losses in connection with Federal lands and installations and federally financed or supported improvements. Specifically:

(1) All executive agencies directly responsible for the construction of Federal buildings, structures, roads, or other facilities shall evaluate flood hazards when planning the location of new facilities and, as far as practicable, shall preclude the uneconomic, hazardous, or unnecessary use of flood plains in connection with such facilities. With respect to existing Federally owned properties which have suffered flood damage or which may be subject thereto, the responsible agency head shall require conspicuous delineation of past and probable flood heights so as to assist in creating public awareness of and knowledge about flood hazards. Whenever practical and economically feasible, flood proofing measures shall be applied to existing facilities in order to reduce flood damage potential.

(2) All executive agencies responsible for the administration of Federal grant, loan, or mortgage insurance programs involving the construction of buildings, structures, roads, or other facilities shall evaluate flood hazards in connection with such facilities and, in order to minimize the exposure of facilities to potential flood damage and the need for future Federal expenditures for flood protection and flood disaster relief, shall, as far as practicable, preclude the uneconomic, hazardous, or unnecessary use of flood plains in such connection.

10661

THE PRESIDENT

(3) All executive agencies responsible for the disposal of Federal lands or properties shall evaluate flood hazards in connection with lands or properties proposed for disposal to non-Federal public instrumentalities or private interests and, as may be desirable in order to minimize future Federal expenditures for flood protection and flood disaster relief and as far as practicable, shall attach appropriate restrictions with respect to uses of the lands or properties by the purchaser and his successors and may withhold such lands or properties from disposal. In carrying out this paragraph, each executive agency may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the disposal documents.

(4) All executive agencies responsible for programs which entail land use planning shall take flood hazards into account when evaluating plans and shall encourage land use appropriate to the degree of hazard involved.

SEC. 2. As may be permitted by law, the head of each executive agency shall issue appropriate rules and regulations to govern the carrying out of the provisions of Section 1 of this order by his agency.

SEC. 3. Requests for flood hazard information may be addressed to the Secretary of the Army or, in the case of lands lying in the basin of the Tennessee River, to the Tennessee Valley Authority. The Secretary or the Tennessee Valley Authority shall provide such information as may be available, including requested guidance on flood proofing. The Department of Agriculture, Department of the Interior, Department of Commerce, Department of Housing and Urban Development, and Office of Emergency Planning, and any other executive agency which may have information and data relating to floods shall cooperate with the Secretary of the Army in providing such information and in developing procedures to process information requests.

SEC. 4. Any requests for appropriations for Federal construction of new buildings, structures, roads, or other facilities transmitted to the Bureau of the Budget by an executive agency shall be accompanied by a statement by the head of the agency on the findings of his agency's evaluation and consideration of flood hazards in the development of such requests.

SEC. 5. As used in this order, the term "executive agency" includes any department, establishment, or other entity of the executive branch of the Government.

SEC. 6. The executive agency shall develop such procedures, regulations, or may be necessary to carry out this order. In other respects, this order shall be effective on January 1, 1967.

THE WHITE HOUSE,

August 10,

[F.R. Doc. 66-

Testimony on House Bill No. 265 presented to the Senate Investigating Committee, 42nd Legislative Assembly, State of Montana by Bruce F. Leeson, Ph.D. student in Natural Resources Management, Montana State University, Bozeman, Montana.

It is a well-known but sometimes forgotten fact that water not only runs downhill but that it also rises under certain circumstances. Every spring this fact is forcefully and disagreeably established once more in the minds of residents of communities who have foolishly built too close to the rivers' edge. Floods are an act of God; flood damage results from the acts of men. In the absence of clear and present danger, the typical citizen is not easily persuaded to avoid or protect himself from flood hazard and in most instances, he does not assume an adequate share of the costs resulting from his irresponsibility. No matter how serious their encroachment on the flood plain, they bear a minor fraction through payment of general taxes, of the public cost of relief and repair, and pay only when they experience direct loss of life or uninsured property. The general public, by bearing a major part of the cost of flood protection and lessening the individual's damage costs, further subsidizes their use of the flood plain. The costs of prevention and loss are staggering.

Federal investment in flood protection and prevention between 1936 and 1966 amounted to \$7 billion dollars. The current annual expenditure for such programs exceeds 500 million dollars, but it has not prevented the annual flood damage from increasing since 1936 to a current loss estimate of one billion dollars per year. In Montana, money spent on ASCS, C-8 streambank stabilization projects for the years 1967, 68' and 69' amounted to \$1,768,572. All this money is spent to minimize flood hazard while at the same time we allow virtually uncontrolled development in other parts of the watershed to partially negate the beneficial effects. The man-hours spent by the city of Bozeman in flood control of Sourdough Creek has risen from 1207 in 1964 to 2031 in 1970. During this same period, new houses were located every year in areas which flooded the previous year. Because this development occurred outside of the city limits, it could not be controlled and the public just has to 'cough up' more money and energy every year to help these people out of their self-imposed disasters.

Building on flood plains hurts people. It is not only those in the inundated houses but also the people downstream. When a flood plain is laced with streets, roads, and parking areas and the natural ground cover is removed, trimmed and clipped, the amount of water that runs off is greatly increased and every rain is a potential flash flood. An average rooftop of twelve hundred square feet will shed 750 gallons of water in a one-inch rainfall. Put together a subdivision of rooftops and you have a veritable flood producing mechanism. By allowing developers to waterproof the flood plains, communities have been increasing the flood damage potential faster than the engineers can build dams or channelize the rivers. Just one shopping center, and parking area built on the flood plain can create enough extra runoff to require the construction of tremendously expensive flood control structures.

-2-

The public pays the whole bill and retroactively provides a subsidy to developers for building where they should not.

We apparently take little heed of the fact that the flood plains often are the best looking parts of our local landscape and generally represent the most valuable and desirable location of local community-based recreation. A flood plain is a great sponge. When the rains and floods come, it soaks up an enormous amount of water, returns a good part of it to the underlying water table, and then over a period of days and weeks, slowly releases the rest. However, the inherent danger of being in the path of potential floods depresses the market value of this land and consequently draws the attention of unscrupulous developers. Septic tanks and wells are punched in after great care has been taken to insure that the State Board of Health tests are done at just the right time. Mr. and Mrs. Unsuspecting take proud possession of their new home, unaware of the potential danger that rising water tables in the spring may be putting coliform in the drinking water of all the little Unsuspectings. But the crisis doesn't seem very real until the toilet is flushed and you get more back than you tried to give away. This situation is not uncommon. I could relate to you a story of just such a development which enjoyed on SBA loan and FHA mortgages.

Montana communities, although they have seldom experienced 'killer' floods, unquestionably do have flood problems. The U.S. Army Corps of Engineers in 1967 determined that 30 Montana urban communities including all the major growth centers had existing flood problems. In most of the tributary valleys, 75 to 90 percent or more of the cumulative flood losses are caused by the comparatively small storms that occur on an average of once in 10 years or oftener. One of these small floods on the West Gallatin River in the spring of 1970 destroyed land worth \$34,000, structures worth \$78,330 and crops worth \$32,000. This represents approximately 1/3 to 1/2 of the people involved. The Gallatin County Commissioners have spent \$10,000 on dikes and anticipate spending \$100,000 for rip-rap. But all they can do is spend money to clean up a problem when they have no authority to prevent people from intensifying the hazard and potential damage. All local government and other planning agencies in Gallatin County expressed the opinion to me that if flood plain zoning powers were available, it could be put to very good use in Gallatin County.

Alternatives to planned development on flood plains are dams and reservoirs, levees or floodwalls, channelization and watershed treatment. These systems are effective and have the advantages of conserving water and preventing erosion. The biggest disadvantage is the high cost of construction and continued maintenance. In addition, many Montanans are loath to condone dam building and channelization. Planned land development, which is the method proposed by House Bill No. 265 probably has the greatest return for the welfare of the general public, both in terms of economic and social values when balanced against the same costs.

Planned land-use development rather than attempting to lessen the flood implies the adoption of legal tools whereby development can be guided in such a manner as to avoid the flood. An examination of House Bill No. 265 reveals that the proper steps towards flood plain planning have been embodied in the proposed legislation. For the first time, Montana's communities and counties

could have the means whereby a more effective utilization of resources could be realized while at the same time reducing unnecessary flood damage expenditures. If the forecasted flow of immigrants to Montana materializes, the imperative need for this legislation is obvious. We cannot continue to develop our resources in the way we have when we are aware of the dangers and costs involved. Other people in other places have had similar experiences and presently have developed flood-plain land use controls with favorable success. Two examples are the Conservation Authorities of Ontario and the Tennessee Valley Authority. Either of these organizations will supply interested persons with helpful information.

House Bill No. 265 is particularly relevant at this time because of the recent availability of National Flood Insurance authorized by the Housing and Urban Development Act, Public Law 90-448. Presently, flood insurance is virtually unobtainable due to the high risk and correspondingly high premium cost. The procedures outlined in House Bill No. 265 would put participating communities into a qualifying position for this insurance which the Federal Government is underwriting.

In conclusion, it is evident the many Montana communities do need and can effectively use the land planning tools embodied in House Bill No. 265. If Montana is to develop and maintain the quality of environment which presently is of such great concern to its citizenry, then it is the responsibility of this legislature to provide them with proper and effective legal implements.

Statement
of
MONS L. TEIGEN
to
Senate Committee on Irrigation and Water

TO: SENATE COMMITTEE ON IRRIGATION AND WATER

SUBJECT: HOUSE BILL 265 - Management of Floodways

I am MONS TEIGEN, Executive Secretary of the Montana Stock-growers Association.

After carefully reviewing House Bill 265, we find the proposal objectionable to those of us in agriculture, especially those who ranch along the watercourses of the state. No matter how laudable the objectives of such a plan might be we nevertheless must concern ourselves with its immediate and future implications.

Not knowing just what a 50-year frequency flood might be, we can only surmise that it is the highest water most of us have observed in the streams with which we are familiar. For example, I have seen the Milk River flooding most of its valley bottom from Chinook to Glasgow. If this was a fifty-year flood, all of the Milk River Valley would come under the act.

According to Section (6), very few of the present activities would be allowed in the Milk River Valley; no irrigation as structures to divert the natural flow are prohibited, no residences and no objects which might flood away. Just think of the ramifications of such a plan!

Section (9) gives the board, its agents and employees the right to enter "upon any lands and waters of the state for the purpose of making any investigation, survey, removal or repair." Said investigation may be done by the board on its own initiative

or on the written request of any three titleholders of land abutting the watercourse. Have we forgotten about the 4th Amendment to the Constitution, the citizen's right to protection from search and seizure?

In closing I would suggest that if flooding regulations are in the public interest the Water Resources Board conduct a study of floodways, and after determining where the 50-year flood line might reach, then petition the Legislature after first conducting hearings in the affected area. In this manner the public as well as the Legislature would know what will be required and we will not be buying a "pig in a poke" so to speak.

We therefore strongly urge that House Bill 265 be not concurred in.

fifteenth day of May, 1969, render a statement to the state board of equalization of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and *four hundred thirty-eight thousandths* percent (1.438%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided; *and such tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter.*"

License tax 1.438%.

Taxable years
beginning April
1, 1969.

Effective April
1, 1971.

Section 2. This act is effective on April 1, 1971.

Approved March 15, 1971.

CHAPTER NO. 392.

An Act to Amend Section 84-2004, R.C.M., 1947, to Provide for a Permanent Metalliferous Mines License Tax and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 84-2004, R.C.M., 1947, as amended by section 1, chapter 9, extraordinary session, Laws of 1969, is amended to read as follows:

Computation—
annual license tax
—mine operators.

"84-2004. **Amount of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, shall be, *for the production years commencing on or after January 1, 1970 and for each production year thereafter*, one dollar (\$1), together with an additional sum or amount computed on the gross value of product which may have been derived by such person from such business, work or operation within this state during the calendar year immediately preceding, at the following rates: the rate of tax shall be fifteen hundredths of one percent (0.15 of 1%) of the first one hundred thousand dollars (\$100,000) of the gross value of the product; five hundred seventy-five thousandths of one percent (0.575 of 1%) of the amount by which such gross value of product exceeds one hun-

Beginning January
1, 1970.
\$1 plus percentage
of gross value.

dred thousand dollars (\$100,000) and does not exceed two hundred and fifty thousand dollars (\$250,000); eighty-six hundredths of one percent (0.86 of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars (\$250,000) and does not exceed four hundred thousand dollars (\$400,000); one and fifteen hundredths percent (1.15%) of the amount by which the gross value of product exceeds four hundred thousand dollars (\$400,000) and does not exceed five hundred thousand dollars (\$500,000) and one and four hundred thirty-eight thousandths percent (1.438%) of the amount by which the gross value of product exceeds five hundred thousand dollars (\$500,000)."

Section 2. This act is effective on its passage and approval.

Effective
immediately.

Approved March 15, 1971.

CHAPTER NO. 393.

An Act Relating to Management and Regulation of the Floodways of Watercourses as Prescribed; to Define Terms; to Provide for Certain Duties and Powers of the Montana Water Resources Board as Prescribed; to Provide for a Floodway Obstruction Removal Fund; to Declare Certain Acts Unlawful; and to Provide for Penalties.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The people of the state of Montana find that recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health, safety, welfare and property of the occupants of flooded lands and the people of this state, and that the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health, and reduce private and public economic losses.

Recurrent flooding
—regulation
necessary for
public good.

Policy and purposes.

Section 2. The policy and purposes of this act are to guide development of the floodway areas of this state consistent with the enumerated findings; to recognize the right and need of watercourses to periodically carry more than the normal flow of water; to provide state coordination and technical assistance to local units in management of floodway areas; to coordinate federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land use regulations and to provide the Montana water resources board with authority necessary to carry out a comprehensive floodway management program for the state.

Specifically, it is the purpose of this act to:

Dangerous uses.

(1) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;

Flood protection.

(2) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

Land information.

(3) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard.

Definitions.

Section 3. As used in this act, unless the context otherwise requires:

"A flood of fifty-year frequency."

(1) "A flood of fifty-year frequency" shall mean a flood magnitude expected to recur on the average of once every fifty (50) years, or a flood magnitude which has a two percent (2%) chance of occurring in any given year;

"Artificial obstruction."

(2) "Artificial obstruction" shall mean any obstruction which is not a natural obstruction;

"Channel."

(3) "Channel" shall mean the geographical area within either the natural or artificial banks of a watercourse or drainway;

"Board."

(4) "Board" shall mean the Montana water resources board;

"Designated flood way."

(5) "Designated floodway" shall mean a floodway whose limits have been designated and established by order of the board.

(6) "Drainway" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

"Drainway."

(7) "Flood" shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;

"Flood."

(8) "Floodway" shall mean the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;

"Floodway."

(9) "Floodway-encroachment lines" shall mean the lines limiting a designated floodway;

"Floodway-encroachment lines."

(10) "Floodplain" shall mean the area adjoining the watercourse or drainway which has been or may hereafter be covered by flood water;

"Floodplain."

(11) "Establish" shall mean construct, place, insert, or excavate;

"Establish."

(12) "Natural obstruction" shall mean any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a non-human cause;

"Natural obstruction."

(13) "Obstruction" shall mean any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

"Obstruction."

(14) "Owner" shall mean any person who has dominion over, control of, or title to an obstruction;

"Owner."

(15) "Political subdivision" shall mean any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and

"Political subdivision."

"Watercourse."

(16) "Watercourse" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse.

Duties of board—
comprehensive
program.Study to acquire
flood data.
Arrangements with
other agencies.Public hearing—
floodway-
encroachment lines.Data and maps—
standards.

Location.

Recording with
county clerk.Alteration after
hearing.Publication of
notice.

Section 4. (1) The board shall initiate a comprehensive program for the delineation of designated floodways for every major water course and drainway in the state. It shall make a study relating to the acquiring of flood data, and have authority to enter into arrangements with the United States geological survey, the United States army corps of engineer or any other state or federal agency for such acquisition.

(2) When sufficient data have been acquired to reasonably locate the floodway of a flood of fifty-year frequency, the board shall establish, by order, after a public hearing, floodway-encroachment lines for such a floodway within which a political subdivision may establish land-use regulation. The board shall furnish such data to officials of the political subdivision having jurisdiction over such areas together with a map outlining the areas involved, a copy of this act, adopted rules and regulations of the board, and suggested minimum standards. These standards, rules and regulations shall reflect gradations in flood hazard based on flood frequency and other criteria as outlined in subsection (2) of section 7 of this act. The location of the encroachment lines shall be the estimated outer boundary of the floodway of fifty-year frequency flood, as determined from the available data. The board shall record all floodway-encroachment lines established by it in the office of the county clerk and recorder of each county in which such lines are found. The board shall have the power to alter such lines at any later time, by order, after a public hearing if a reevaluation of the then available flood data warrants it. Notice of any such hearing or order of the board establishing or altering any such line shall be given by publishing such notice once each week for three consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of such order.

(3) If within one (1) year from the date of transmittal of the flood plain information to officials of the political subdivisions, any political subdivision has failed to adopt land-use regulations which meet or exceed the minimum standards of the board, the designated floodway shall be enforced and no artificial obstruction or nonconforming use shall be established by any person within the floodway-encroachment lines for such a fifty-year flood as established by the board under subsection (2) of this section, unless specifically authorized by the board.

Section 5. Any artificial obstruction or nonconforming use in any designated floodway enforced under subsection (3) of section 4 of this act and not exempt under section 6 of this act is hereby declared to be a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the board.

Section 6. (1) It shall be unlawful for a person to establish any artificial obstruction or nonconforming use within a designated floodway, or (2) for any owner to permit any artificial obstruction to remain within a designated floodway without a permit from the board. This act shall not affect any existing artificial obstruction or nonconforming use established in the floodway prior to the effective date of this act and before the board has enforced a designated floodway under subsection (3) of section 4 of this act; provided, that no person shall make nor shall any owner allow alterations of any artificial obstruction within a designated floodway whether the obstruction proposed for alteration was located in the floodway before or after the effective date of this act except upon express written approval of the board. Maintenance of an obstruction shall not be construed to be an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment; (a) agricultural uses (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips, (c) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps,

On failure to adopt
land-use regulations.

Enforcement.

Public nuisance.

Permit required—
artificial
obstruction—
nonconforming use.

Alteration.

Approval.

Open space
uses permitted.

swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails (d) forestry, including processing of forest products with portable equipment (e) residential uses such as lawns, gardens, parking areas and play areas (f) excavations subject to the issuance of a permit under section 7.

Nonconforming uses prohibited.

(3) The following nonconforming uses shall be prohibited within the designated floodway: (a) Any building for living purposes or place of assembly or permanent use by human beings (b) any structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway (c) the construction or permanent storage of any object subject to flotation or movement during flood level periods.

Issuance of permits.

Section 7. (1) The board shall have the power to issue permits for the establishment or alteration of obstructions which would otherwise violate section 6 of this act. The application for the permit shall contain such information as the board shall require, including complete maps, plans, profiles and specifications of the obstruction and watercourse or drainway.

Considerations by board.

(2) In passing upon such application, the board shall consider (a) the danger to life and property by water which may be backed up or diverted by such obstruction, (b) the danger that the obstruction will be swept downstream to the injury of others, (c) the availability of alternate locations, (d) the construction or alteration of the obstruction in such a manner as to lessen the danger, (e) the permanence of the obstruction, (f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction, and (g) such other factors as are in harmony with the purpose of this act. The board may make a part of such permit any reasonable conditions it may deem advisable. In order for the permit to continue to remain in force, the obstruction must be maintained so as to comply with the conditions and specifications of the permit.

Conditions.

Maintenance.

Approval or denial.

(3) Permits for obstructions to be established in the floodway of watercourses must be specifically approved

or denied within a reasonable time by the board; permits for obstructions in the floodways or drainways shall be conclusively deemed to have been granted sixty (60) days after the receipt of such application by the board, or after such time as the board shall by rule specify, unless the board notifies the applicant that the permit is denied.

(4) Every application for a permit shall be accompanied by a nonrefundable application fee of ten dollars (\$10) which the state treasurer shall credit to the Floodway Obstruction Removal Fund.

Fee \$10.

Deposit.

Section 8. The powers and duties of the board relative to obstructions in a board floodway shall include the following:

Powers and duties of board.

(1) Where an obstruction to a floodway established under subsection (2) of section 4 of this act has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the board may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the board; and

Removal of obstructions by board.

(2) Where, after investigation, notice, and hearing, an order has been issued to the owner of an obstruction not exempt under the provisions of section 6 of this act for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the board may make or cause such removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law.

Notice and hearing—failure of owner to remove.

Costs borne by owner—recovery.

Section 9. The board, its agents, surveyors, or other employees, may make reasonable entry upon any lands and waters in the state for the purpose of making any investigation, survey, removal, or repair contemplated by this act. An investigation of any natural or artificial obstruction shall be made by the board either on its own initiative, on the written request of any three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of any political subdivision.

Right of access.

Request for investigation.

Section 10. This act shall not extend to any obstruction in the floodway of a watercourse or drainway where the drainage area above the same, either within or with-

Exemptions.

out the state, is less than twenty-five (25) square miles in extent, unless a particular watercourse or drainway is expressly declared to be within the coverage of this act by order of the board.

Orders and rules.

Section 11. The board may issue such orders and rules as are necessary to implement the provisions of this act. If an order is issued to the owner of an artificial obstruction not exempt under the provisions of section 6 of this act for its removal or repair, such order shall not become effective less than ten (10) days after a hearing is held relating to such order. In addition to any requirement imposed by subsection (2) of section 4 of this act, where any order is issued which affects with particularity the land adjacent to any watercourse or drainway, notice of the contents of such order and of any required hearing shall be mailed by the board to the titleholder of such land not less than ten (10) days before the effective date of such order, or, if there is a required hearing, to the titleholder of such land and to the owner of the obstruction not less than ten (10) days before the date of such hearing; provided, that such notice need not be given to the owner of the obstruction for an order issued pursuant to subsection (2) of section 8 of this act if the owner cannot be found or determined. All orders and rules issued by the board shall be on file at the offices of the board and in the office of the county clerk of each county affected by such order or rule. Any person aggrieved by any order of the board issued under this act may appeal from such order to a court of competent jurisdiction within thirty (30) days after its effective date. In the event such an appeal is taken, enforcement of such order shall be stayed pending the outcome of such appeal. Service of notice of the appeal shall be made upon the director of the board.

Notice of hearing.

Filing.

Appeal.

Stay.

Service—notice of appeal.

Floodway obstruction removal fund.

Allocation of money.

Penalties for violations.

Section 12. The state treasurer is hereby directed to create and establish the Floodway Obstruction Removal Fund and to credit to such fund for the removal of obstructions as provided in subsection (1) of section 8 of this act, such money as shall be specifically appropriated or reappropriated during any biennium by the legislature. The Montana water resources board may allocate money from the Floodway Obstruction Removal Fund for purposes provided in subsection (1) of section 8 of this act.

Section 13. (1) Any person who violates section 6

of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one hundred dollars (\$100), or be imprisoned in the county jail for not more than ten (10) days, or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

Section 14. (1) The granting of a permit under the provisions of this act shall in no way affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision or of the United States, but shall be construed as an added requirement; provided, that if a political subdivision enacts and enforces land-use regulations which meet or exceed the minimum standards of the board, the board's recommendations in regard to artificial obstructions or non-conforming uses shall be advisory only. The grant or denial of a permit shall not have any effect on any remedy of any person at law or in equity; provided, that where it is shown that there is a wrongful failure to comply with this act, there shall be a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of any person bringing suit.

Effect of permit.

Rebuttable presumption.

(2) No permit for the construction of any structure to be established within a designated floodway shall be granted by any political subdivision unless the applicant has first obtained the permit required by this act, or until the board acknowledges that such structure would not be an obstruction within the meaning of this act.

Limitations.

(3) No action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act shall be brought against the state, the board, a member of the board, or its employees or agents. No provision of this act shall be construed as interfering in any way with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

Liability limited.

Section 15. The use of any one of the remedies or powers given to the board in this act shall not constitute a bar to the exercise of any other remedy or power given by this act.

Remedies.

Section 16. If any section in this act or any part of any section is declared invalid or unconstitutional, such

Severability clause.

declaration of invalidity shall not affect the validity of the remaining portions thereof.

Approved March 15, 1971

CHAPTER NO. 394

An Act to Amend Section 23-3022, R.C.M. 1947, as Amended, to Delete the Provision that a Person May Not Gain or Lose Residence While Employed in the Service of the United States or of the State of Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 23-3022, R.C.M. 1947, is amended to read as follows:

Determination of voter residence.

"23-3022. **Residence, rules for determining.** For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

Fixed habitation.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

Residence not gained or lost.

(2) A person may not gain or lose a residence while a student at any institution of learning, while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

Armed forces personnel.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

Temporary absence from state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

County residence.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state. Out of state residence.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a man's family resides is presumed his place of residence. However, a man who takes up or continues his residence at a place other than where his family resided with the intention of remaining is a resident of the place where he resides. Family residence.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence. Removal and intent.

(10) The term of residence must be computed by including the date of election." Term of residence.

Approved March 15, 1971

CHAPTER NO. 395

An Act Amending Section 75-8702, R.C.M. 1947, By Deleting Part-Time Student From the Definition of Resident Student. Amending Section 75-8703, R.C.M. 1947, to Allow the Spouse or Dependent Children of an Adult Employed on a Full-Time Basis Within the State of Montana to Apply for In-State Tuition Classification and Amending Section 75-8704, R.C.M. 1947, to Create a Presumption: All Sections Being Part of Senate Bill 2 of the Forty-Second Session Laws of Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 75-8702, R.C.M. 1947, is amended to read as follows: Amending clause.

"75-8702. **Definitions.** Terms used in this chapter are defined as follows: (1) "Domicile" means a person's true, fixed and permanent home and place of habitation. Definitions.
"Domicile."

(2) "Emancipated minor" means a person under the age of *eighteen (18)* years who supports himself from his own earnings or is married; "Emancipated minor."